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IN THE SUPREME COURT OF THE
UNITED STATES
October Term, 1988

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STATE OF DELAWARE, Plaintiff

STATE OF TEXAS, Plaintiff in Intervention

V.

STATE OF NEW YORK, Defendant

* * *

MOTION OF THE STATE OF TEXAS FOR LEAVE TO FILE COMPLAINT IN INTERVENTION; COMPLAINT IN INTERVENTION; AND BRIEF OF THE STATE OF TEXAS IN SUPPORT OF MOTION FOR LEAVE TO FILE COMPLAINT IN INTERVENTION

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STATE OF DELAWARE, *Plaintiff*

STATE OF TEXAS, Plaintiff in Intervention

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MOTION OF THE STATE OF TEXAS FOR LEAVE TO FILE COMPLAINT IN INTERVENTION

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IN THE SUPREME COURT OF THE
UNITED STATES
October Term, 1988

* * *

STATE OF DELAWARE, *Plaintiff*

V.

STATE OF NEW YORK, *Defendant*

* * *

MOTION OF THE STATE OF TEXAS FOR LEAVE TO FILE COMPLAINT IN INTERVENTION

Pursuant to Rule 9 of the Rules of the Supreme Court, the State of Texas, a sovereign state of the United States of America, by and through Attorney General Jim Mattox, moves the Court for an order permitting it to intervene as Plaintiff in the above-entitled cause and permitting its proposed Complaint in Intervention, attached hereto, to be filed in this action. In support of this Motion, the State of Texas would show the Court as follows:

I.

1. On or about May 31, 1988, this Court granted the Motion of Plaintiff State of Delaware ("Delaware") for leave to file a complaint invoking the original jurisdiction of this Court to resolve a controversy between Delaware and Defendant State of

New York ("New York") as to which state is entitled to claim and take possession of certain unclaimed intangible personal property, consisting of moneys and other intangible property ("Excess Receipts"), held by securities brokerage houses incorporated in Delaware.

2. On December 12, 1988, Thomas Jackson, Esquire, was appointed Special Master in this case.

3. As specifically and particularly set forth in the attached proposed Complaint in Intervention, the State of Texas claims a portion of the Excess Receipts[1] which constitute the unclaimed property that is the subject matter of this controversy. Texas claims a portion of these Excess Receipts for the reason that they constitute a debt owed by the issuing entity (the "Issuer") to the securities' Beneficial Owner. If the identity of the Beneficial Owner is unknown, the Excess Receipts should be remitted to the state of incorporation of the Issuer under that state's unclaimed property law. Texas accordingly claims those Excess Receipts held or formerly held by Delaware brokerage firms generated by Issuers incorporated in the State of Texas.

4. As specifically and more particularly set forth in the attached proposed Complaint in Intervention, the amount of Excess Receipts in issue in this litigation that Texas is entitled to claim is presently unknown, but is very substantial.

5. The decision of the Court in this action will conclusively determine the right of Texas to claim and take possession of these Excess Receipts. If the argument of either Delaware or New York is accepted,

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[1] In the Complaint in Intervention, Texas has defined certain terms. Those definitions, which are also employed in this Motion, are incorporated hereby by reference.

Texas will be forever precluded from taking possession of unclaimed property of this nature.

6. Because Delaware, New York and Texas each assert conflicting claims to the subject Excess Receipts, Texas' interest is not adequately represented by the existing parties.

7. Based on the foregoing, Applicant is entitled to intervene as a matter of right pursuant to Rule 24(a)(2), Federal Rules of Civil Procedure.

II.

8. Alternatively, Texas urges the Court to exercise its discretion and grant the requested intervention pursuant to Rule 24(b), Federal Rules of Civil Procedure.

9. As specifically and more particularly set forth in the attached proposed Complaint in Intervention, Texas is also requesting the Court to consider and determine its claim to certain Additional Excess Receipts, consisting of excess receipts held by the Depository Trust Company and excess receipts which have arisen in connection with distributions made by municipal and other governmental issuers ("Additional Excess Receipts"). Texas urges the Court to consider such Additional Excess Receipts in connection with the lawsuit for the reason that they come into existence and acquire their character in the exact same manner as the Excess Receipts under consideration. Additionally, Texas claims a portion of the Additional Excess Receipts for the same reason and on the same basis that it claims a portion of the Excess Receipts already at issue. Clearly, a determination of Texas' right to claim and take possession of these Additional Excess Receipts involves questions of law and fact already before the Court.

10. As specifically and more particularly set forth in the attached proposed Complaint in Intervention, Texas cannot even estimate the amount of Additional Excess Receipts subject to its claim. However, the amount is likely to be tremendous.

11. The intervention of Texas in this action will not unduly delay these proceedings or prejudice the adjudication of the rights of the original parties.

III.

12. This Court, in *Western Union Telegraph Company v. Pennsylvania*, 368 U.S. 71 (1961), recognized the difficulties inherent in resolving controversies between different states over their respective rights to claim and take possession of unclaimed intangible personal property, and concluded that the United States Supreme Court was the appropriate forum in which "all the states that want to do so can present their claims for consideration and final, authoritative determination." Id. at 79. See, also, *Pennsylvania v. New York*, 407 U.S. 206 (1972). It is such an opportunity to present its claims, that Texas seeks by urging this Court to grant leave to intervene herein.

Wherefore, Texas prays that it be permitted to intervene as a party plaintiff in this case to assert the claims set forth in the attached Complaint in Intervention.

Respectfully submitted,

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IN THE SUPREME COURT OF THE
UNITED STATES
October Term, 1988

* * *

STATE OF DELAWARE, *Plaintiff*

STATE OF TEXAS, *Plaintiff in Intervention*

V.

STATE OF NEW YORK, *Defendant*

* * *

COMPLAINT IN INTERVENTION

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NO. 111 Original

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IN THE SUPREME COURT OF THE
UNITED STATES
October Term, 1988

* * *

STATE OF DELAWARE, *Plaintiff*

STATE OF TEXAS, *Plaintiff in Intervention*

V.

STATE OF NEW YORK, *Defendant*

* * *

COMPLAINT IN INTERVENTION

The State of Texas, Plaintiff in Intervention, by Jim Mattox, its Attorney General, with leave of the Court first had, files this Complaint in Intervention in the above styled and numbered cause, and complains and alleges as follows:

I.

JURISDICTION

1. The original jurisdiction of this Court is invoked under Article III, Section 2 of the Constitution of the United States and Section 1251 of Title 28 of the United States Code.

II.

PENDING ACTION

2. On May 31, 1988, this Court granted the motion of Plaintiff State of Delaware ("Delaware") for leave to file a complaint invoking the original jurisdiction of the Court to resolve a controversy between Delaware and Defendant State of New York ("New York") as to which state is entitled to claim and take possession of certain unclaimed moneys and other intangible property held by securities brokerage firms incorporated in Delaware.

3. On December 12, 1988, Thomas Jackson, Esquire, was appointed Special Master to hear this case.

III.

INTEREST AND CLAIM OF PLAINTIFF IN INTERVENTION

4. Plaintiff in Intervention, the State of Texas, acts by and through the Attorney General of Texas, the official of the State of Texas charged with the duty under the Constitution and the laws of the State of prosecuting unclaimed property suits at the request of the Treasurer of the State of Texas and of representing the State of Texas in litigation generally.

5. At present, this litigation involves a dispute as to which state is entitled to the custodial taking of certain unclaimed, intangible personal property ("Excess Receipts"), which comes into being and acquires its character as unclaimed property in the context of securities transactions. The Excess Receipts consist of unclaimed payments of dividends, profits, principal, interest, and securities representing any of

the foregoing ("Distributions"), held or formerly held by brokerage firms incorporated in the State of Delaware. The Excess Receipts are Distributions received by these brokerage firms for the benefit of their customers which exceed the amounts to which the brokerage firms are entitled. The Excess Receipts are usually maintained in a "Suspense Account" until expiration of the applicable dormancy period, after which time, under current practice, they are remitted to New York.

6. Plaintiff in Intervention claims a portion of the Excess Receipts. Additionally, Plaintiff in Intervention seeks to have this Court consider and determine rights to certain additional Excess Receipts ("Additional Excess Receipts") which are not yet part of this litigation which involves the same issues. These Additional Excess Receipts consist of: (a) excess receipts presently being remitted to New York which are held by the Depository Trust Company ("DTC"), a national clearinghouse for the settlement of trades in corporate and municipal securities; and (b) excess receipts arising from unclaimed principal and interest payments on municipal and state bonds which have never been remitted to any state. Additional Excess Receipts are of the same character and come into existence in the exact same manner as the Excess Receipts at issue in the principal case and will necessarily be controlled by the Court's ruling in this case.

7. Texas is entitled to a portion of the Excess Receipts at issue in this litigation (and to a portion of the Additional Excess Receipts it seeks to have the Court consider) because they constitute a debt of the entity ("Issuer") initially issuing the shares of stock, bonds, debentures or other securities instruments owed to the entity or individual ("Beneficial Owner") who has the economic rights to the security, including the entitlement to Distributions.

8. If the identity and location of the Beneficial Owner is unknown, the state of incorporation of the Issuer should be entitled to collect the Excess Receipts under that state's unclaimed property law. Under existing law and practice, a debt of identical character is remitted to the Issuer's state of incorporation when held by the Issuer's Paying Agent (defined in part IV) so it should be similarly remitted to the state of incorporation of the Issuer when held by other agents in the securities holding, transfer, and distribution system ("Distribution System"). Distributions generated by Issuers incorporated in the State of Texas and those generated by Texas municipalities which are unclaimed and whose Beneficial Owner is unknown, should be returned to the State of Texas. The claim of Plaintiff in Intervention is based upon the practical reality of the manner in which securities are traded and Distributions are paid, and relies upon a strict interpretation of this Court's holding in *Texas v. New Jersey*, 379 U.S. 674 (1965).

9. By this action, Plaintiff in Intervention seeks a judgment that New York pay to Plaintiff in Intervention all Excess Receipts and Additional Excess Receipts attributable to Issuers incorporated in the State of Texas and those that are attributable to Texas municipalities. Plaintiff in Intervention further seeks a declaration that Texas has the right in the future to claim and take possession of Excess Receipts and Additional Excess Receipts without interference from any other state. Plaintiff in Intervention additionally seeks an order from this Court enjoining and restraining New York from demanding or collecting such Excess Receipts and Additional Excess Receipts, and from expending any such sums collected, but presently unspent, which are attributable to Issuers incorporated in the State of Texas and to Texas

municipalities, until such time as this controversy is resolved.

10. Plaintiff in Intervention asserts its claim pursuant to Chapter 72, Tex. Prop. Code Ann. §72.001, *et seq.* (Vernon Supp. 1989), ("Texas Property Code") which provides, in essence, for the custodial taking of abandoned or unclaimed tangible or intangible personal property when the existence and location of the owner of the property is unknown to the holder of the property, and no claim to said property has been asserted within the applicable dormancy period, which for most types of personal property is three years.[2] Chapter 72 of the Texas Property Code is set forth in Exhibit "A" attached to Plaintiff in Intervention's Brief in Support of Motion for Leave to File.

IV.

DEFINITIONS

11. The process by which securities Distributions are made and which gives rise to the Excess Receipts is complex. Because the process has evolved within the last twenty years, it has not been extensively studied and is generally understood only by persons who work within the Distribution System. In order to assist the Court, Plaintiff in Intervention has prepared two charts that graphically illustrate the Distribution System and which are attached hereto as Exhibits "1" and "2". For the Court's further convenience, Plaintiff in Intervention has assembled the

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[2]Since 1962, the State of Texas has provided by statute that the State shall take custodial possession of unclaimed or abandoned property of unknown owners. Chapter 72 of the Property Code repealed and replaced Tex.Rev.Civ.Stat.Ann. art. 3272a (Vernon 1981).

following definitions which will be used throughout the remainder of this Complaint.

"Additional Excess Receipts" means Distributions received by DTC for the benefit of DTC Participants which exceeds the amount paid to DTC Participants. These funds are maintained in the "Unclaimed Dividends Account" at DTC until after the expiration of the applicable dormancy period, after which time, under current practice, they are remitted to New York. "Additional Excess Receipts" also means unclaimed principal and interest payments of bonds, debentures, or other debt obligations attributable to corporate and Governmental Issuers. "Beneficial Owner" or "Customer" means an entity or individual who acquires and owns the economic rights with respect to a security, including entitlement to Distributions, and the power to sell or dispose of the security.

"Book Entry Accounting" means the computerized accounting process by which ownership interests in securities are recorded and Distributions are proportionally allocated and recorded.

"Book Entry Certificate System" means the process of reflecting the ownership of securities only through computerized notations in the books and records. In this Book Entry Certificate System the Issuer initially issues a single Physical Certificate (or one Physical Certificate for each maturity and interest rate) in the name of DTC or Cede & Co., its Nominee. Cede & Co. is the only Record Owner, as reflected on the Issuer's books and records. Thereafter, all ownership of securities is evidenced by a computer printout confirmation statement of a securities transaction, ("Book Entry Certificate"), rather than by possession of a Physical Certificate.

"Cede & Co." is the principal Nominee used by the Depository Trust Company.

"Depository Trust Company" ("DTC") is a trust company incorporated under the banking laws of New York, and is the national clearing house created by the brokerage firms and banks in cooperation with the New York Stock Exchange.[3] As a clearing house, it provides a system for the settlement of trades in corporate and municipal securities between brokerage firms without the delivery of Physical Certificates. It also provides a system for the collection and disbursement of Distributions for the ultimate benefit of Beneficial Owners or Customers by making federal wire transfers to banks for the accounts of DTC Participants. DTC is the principal Intermediary in the modern Distribution System. Access to the Depository Trust Company is limited solely to DTC Participants.

"Distributions" means payments of dividends, profits, principal, interest and securities representing any of the foregoing.

"Distribution System" means the chain of transactions between the Issuer and the Beneficial Owner, which includes all Intermediaries in the trading of securities and the receipt and disbursement of Distributions.

"DTC Participant" means the brokerage firms and banks who are members of the Depository Trust

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[3]Plaintiff in Intervention believes that the Depository Trust Company is one of two clearinghouses operating in the United States. Any reference to the Depository Trust Company or DTC shall mean and include all clearinghouses.

Company.[4] All of the brokerage firms identified by Delaware in its Complaint are DTC Participants.

"Excess Receipts" means Distributions received by brokerage firms incorporated in Delaware for the benefit of their Customers which exceeds the amounts which the brokerage firms are entitled. These funds are usually maintained in a "Suspense Account" until expiration of the applicable dormancy period, after which time, under current practice, they are remitted to New York.

"Ex Dividend Date" or "Ex Date" is the date determined pursuant to rules of the securities exchanges and the National Association of Securities Dealers to establish whether a buyer or seller of securities is entitled to a Distribution that has been previously announced but not as yet paid. Under these rules, Ex Dividend Date is five business days before the Record Date. Buyers of securities in transactions that occur before the Ex Dividend Date are entitled to the Distribution; buyers of securities in transactions that occur on or after the Ex Dividend Date are not entitled to the Distributions even though they might own the securities on the Record Date.

"Governmental Issuer" is a state or any political subdivision thereof authorized under state law to issue municipal bonds, notes or other obligations.

"Intermediary" means any entity that acts as a conduit in connection with the receipt and disbursement of any part of a Distribution in the process by which that Distribution moves from the Issuer to a Beneficial Owner or Customer. The

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[4]DTC Participants as of December 31, 1987, are listed in the DTC Annual Report, a copy of which has been filed with the Clerk.

principal Intermediaries are Paying Agents, the Depository Trust Company, DTC Participants and other brokerage firms.

"Issuer" means the entity initially issuing the shares of stock, bonds, debentures or other securities instruments.

"Nominee" means an entity, usually a general partnership, that is named for purposes of convenience as the Record Owner of securities owned by or for the account of Intermediaries or Beneficial Owners.

"Paying Agent" means an entity, usually a bank, that is responsible for receiving Distributions from the Issuer and disbursing the Distributions on behalf of the Issuer. A Paying Agent may also maintain the stock or bond registration books as Registrar. The Paying Agent is the first Intermediary in the Physical Certificate System. It makes payments to Record Owners as reflected on the Issuer's books and records. In modern practice the majority of outstanding securities are held of record, as shown on the Issuer's books and records, in the name of Cede & Co. Most of the remaining Record Owners are large institutional investors such as insurance companies, mutual funds, and brokerage firms trading in the names of their Nominees.

"Physical Certificate" means an instrument prepared by the Issuer of a security that reflects the named ownership of the security as shown on the records of the Issuer, along with the amount, type, interest rate, maturity date, if any, and all other such relevant terms.

"Physical Certificate System" means the process of issuing Physical Certificates by the Issuer in the name of each individual or entity whose name appears

on the Issuer's books and records as the Record Owner. In modern practice, as brokerage firms come into possession of Physical Certificates, these Physical Certificates are reregistered in either the name of Cede & Co. or a Nominee name.

"Record Date" for a Distribution is the date established by the Issuer to determine the identity of the Record Owner to whom the Distribution is to be made.

"Record Owner" means the person in whose name the ownership of a security is recorded on the books of the Issuer. In modern securities practice the Record Owner is almost always either an Intermediary, (usually Cede & Co.), a Nominee used by an institutional investor.

V.

BACKGROUND

12. Radical changes have occurred in the last twenty years with respect to the manner in which securities are traded and held, and Distributions are paid. A brief description of the evolution of the Distribution System is necessary to provide the background of this litigation and to facilitate a full understanding of the complex issues it involves.

13. Prior to 1970, securities transactions in shares of stock were effected through the actual transfer of Physical Certificates. In securities exchanges and over-the-counter transactions, the brokerage firm representing the Customer who was selling securities delivered Physical Certificates to the brokerage firm representing the Customer who was buying securities. The purchasing Customer would then normally receive a Physical Certificate in his

name. That Customer then became the Record Owner of the securities, and Distributions were thereafter made by the Issuer's Paying Agent by check mailed directly to the Customer. If the Customer were involved in active securities speculation, he might request that the Physical Certificates remain in the street name of his brokerage firm. He would then rely on his brokerage firm to produce the Physical Certificate when necessary to complete a subsequent resale of the securities.

14. The use of Physical Certificates carried with it a considerable degree of risk. All Physical Certificates are negotiable instruments, and are vulnerable to theft and forgery. Physical Certificates are also subject to being lost or misplaced, or destroyed in connection with some type of casualty loss. Those Customers who chose not to hold their own Physical Certificates ran the additional risk that the brokerage firm might be unable to account for the Physical Certificates, or, worse yet, the brokerage firm might become insolvent and the Customers would become unsecured creditors.

15. The handling of Physical Certificates during this period was a major and troublesome aspect of the securities business. Issuers employed Paying Agents or stock transfer agents whose primary functions were to reregister Physical Certificates, cancel old Physical Certificates, and issue new Physical Certificates. The volume of transactions processed through the brokerage firms and these transfer agents was tremendous.

16. Prior to 1983 securities transactions in bonds, debentures and other long term instruments of indebtedness were also handled through Physical Certificates. However, these Physical Certificates involved an even greater risk because they were often

made payable to bearer. Anyone who possessed the debt instrument was, upon presentation, entitled to payment. Interest was traditionally payable only through a process of physically clipping coupons off the bearer bonds and delivering them to the Issuer's Paying Agent. Before the 1983 changes in the federal tax law, some Issuers did issue registered bonds or debentures to named owners, which instruments could then be transferred by endorsement, much like stock, but the greatest majority were issued in bearer form. Today all municipal bonds are issued in registered form, and interest is paid by check mailed to the Record Owner by the Issuer's Paying Agent.

17. During the late 1960s and early 1970s, the traditional manner of handling securities transactions described above began to break down under the sheer weight of the increased volume of transactions. The "back offices" of brokerage firms became inundated with paper, and the tracing of transactions became increasingly difficult. The entire securities industry was confronted with a paperwork and record-keeping crisis inevitable in a system in which trillions of Physical Certificates were physically moved each year.

18. The present Distribution System for handling securities transactions evolved because of two major changes in the method by which these transactions were processed. Enactment by Congress of the Securities Investor Protection Act of 1970, 15 U.S.C. §§78aaa-78lll, permitted Customers to accept bookkeeping entries without regard to the location of their Physical Certificates without risking the loss of capital in the event of brokerage firm failure. Secondly, the Depository Trust Company was created to serve as a nationwide clearinghouse. Brokerage firms who became DTC Participants could now deal with each other through Book Entry Accounting on the records of DTC, without the delivery of any Physical

Certificates, by simply endorsing and reregistering all Physical Certificates in the name of Cede & Co. thereby making Cede & Co. the only Record Owner, and depositing all these Physical Certificates at DTC. The Distribution System has now evolved even further. An Issuer may choose to issue securities in the Book Entry Certificate System so that a single Physical Certificate is issued in the name of Cede & Co. on behalf of DTC. Thereafter, all trades occur in book entry form. In the Book Entry Certificate System, no entity other than DTC has the authority to receive Physical Certificates.

19. The shift to Book Entry Accounting for recording the beneficial ownership of securities is now virtually complete. Less than one percent (1%) of all securities transactions involve the actual delivery of Physical Certificates. Most Physical Certificates outstanding today are held in street name, with Cede & Co. being the predominant holder. In well over fifty percent (50%) of new issues, no Physical Certificates are available to Customers at all because the Issuer used the Book Entry Certificate System.

VI.

CLAIMS OF DELAWARE AND NEW YORK

20. Delaware and New York each argue that their respective claims to the Excess Receipts are supported by the rulings of this Court in *Texas v. New Jersey, supra*, and *Pennsylvania v. New York*, 407 U.S. 206 (1972). These cases establish the principle that unclaimed property is subject to being remitted to the state of the last known address of its owner. If that address is unknown, the property is to be remitted to the state of incorporation of the debtor.

21. Delaware asserts the right to claim the Excess Receipts at issue herein on the basis that the

identity of said property's Beneficial Owner, whom Delaware equates with a creditor, is unknown. Therefore, the Excess Receipts should be remitted to Delaware as the state of incorporation of the brokerage firm holding such funds, which is characterized by Delaware as the debtor.

22. New York, on the other hand, argues that the property's Beneficial Owner is always paid the Distributions to which he is entitled. The Beneficial Owner therefore has no claim to the Excess Receipts and his identity is irrelevant to the analysis of rights at issue herein. Instead, contends New York, the last known address of the brokerage firms that were underpaid, characterized by New York as the "creditor" firms, determines to which state the overpayments held by the "debtor" firms should be paid. Since most such brokerage firms have New York trading addresses, New York is entitled to claim the Excess Receipts.

23. The arguments of both Delaware and New York are based upon narrow technical and legalistic analyses of a complex Distribution System, which is more fully described in Part VI below. Both Delaware's designation of the brokerage firms as "debtors", and New York's classification of the "underpaid" brokerage firms as "creditors", fail to properly characterize the relationships of the various parties to ownership and Distribution transactions of the present Distribution System. In this Distribution System, at least two Intermediaries are *always* involved in the routine processing of ownership trades and moving Distributions between the Issuer and the ultimate Beneficial Owner/Customer. Delaware is basically contending that the state of incorporation of the *last* Intermediary, the brokerage firm holding the Excess Receipts, determines the state to which all the unclaimed property is to be remitted. New York

contends that all Excess Receipts should be remitted to New York for the reason that the principal business offices and headquarters of most of the Intermediary brokerage firms are located in the New York City area. Under either argument, the place of incorporation of mere Intermediaries, who act simply as transfer agents and who themselves as a rule make no claim to the Distributions,[5] will determine which state can claim and take possession of hundreds of millions of dollars. As a practical matter under either states' theory, only two states would be legally authorized to claim the great bulk of these moneys.

VII.

CLAIM OF TEXAS

24. In both *Texas v. New Jersey, supra,* and *Pennsylvania v. New York, supra*, the Court made clear its commitment to resolving unclaimed property controversies in a manner that is both equitable and easy to administer. In *Texas v. New Jersey, supra*, Mr. Justice Black adopted a rule that "involves a factual issue simple and easy to resolve and leaves no legal issue to be decided" and that "will tend to distribute escheats among the states in the proportion to the commercial activities of their residents." The rule was clear under these legal principles that when a Paying Agent could not find a last known address for the Record Owner, unclaimed dividends should be remitted to the state of incorporation of the Issuer. The same principle should be adopted in this litigation since the

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[5]Delaware notes that one brokerage firm, Paine, Webber, Inc. may claim entitlement to Excess Receipts. Under the theory set forth, any brokerage firm desirous of asserting such claim who has traced the transaction sufficiently to identify entitlement to the funds could submit its claim to the Issuer's state of incorporation for payment.

addition of more Intermediaries to the chain of distribution should not affect the entitlement of states to the Excess Receipts. This would also return these moneys to the states pro rata according to each state's commercial activity, and would mitigate the harshness of the "winner take all" positions espoused by both Delaware and New York. This is the resolution urged by Plaintiff in Intervention.

VIII.

DESCRIPTION OF THE DISTRIBUTION SYSTEM: PHYSICAL CERTIFICATES

25. Whenever securities are to be issued, the Issuer must first choose whether to use the Physical Certificates System or the Book Entry Certificate System. This part of the Complaint assumes that the Issuer selects the Physical Certificate System and opts to issue Physical Certificates in registered form, *e.g.*, stock, if it is an equity transaction, or bonds/debentures if it is a debt transaction.

26. The Physical Certificates are purchased at closing by initial underwriters, who are DTC Participants. The DTC Participants then immediately re-register the Physical Certificates in the name of the Nominee of DTC, Cede & Co. The Physical Certificates are deposited at DTC, where they are effectively "parked" until after maturity or abandonment. All trades of Physical Certificates between or among DTC Participants occur only on the books and records of DTC.

27. By means of the foregoing, Cede & Co. becomes the Record Owner of all Physical Certificates deposited with DTC, although neither DTC nor Cede & Co. claims or has any legal ownership rights to, or

interest in, the Physical Certificates except as custodian. Indeed, DTC characterizes itself as merely a collections and clearing agent.

28. Purchases of securities in the form of Physical Certificates held at DTC are made through brokerage firms who are, or act through, DTC Participants. These purchases are made in book entry form only. Customers do not receive from the Issuer or from their DTC Participant Physical Certificates evidencing their ownership interest in the securities. Rather, each Customer maintains an account at a DTC Participant or other brokerage firm. The books and records of the DTC Participant or other brokerage firm constitutes the only evidence of each Customer's legal ownership of an undivided interest in the Physical Certificates held at DTC. When such "beneficial ownership" is purchased, the DTC Participant or other brokerage firm sends its Customer a transaction statement confirming and setting forth the terms of the purchase. In fact, DTC was created to eliminate the need to send Physical Certificates back to the Issuer's Paying Agent for reregistration in the name of the new owner or his brokerage firm each time a sale or transfer of such Physical Certificates occurred between the brokerage firms. Transactions at DTC are accomplished by the creation of what are, in effect, fungible Physical Certificates, whose only indices of ownership are evidenced on the books and records of DTC and DTC Participants.

29. The Customer who wants a Physical Certificate must make a request through a DTC Participant to have the Physical Certificate reregistered in her name. The DTC Participant then instructs DTC to endorse the appropriate amount of Physical Certificates purchased by its Customer and deliver those Physical Certificates to the Issuer's

Paying Agent for reregistration. The reregistration process takes six to eight weeks.

30. Three (3) sets of books and records reflect the interests of the respective parties in Physical Certificates. The books and records of the Issuer (or its Paying Agent) reflect that Physical Certificates are held by Cede & Co. The books and records of DTC evidence the amount and identity of Physical Certificates held by each DTC Participant. The books and records of each DTC Participant evidence the beneficial ownership of its respective Customers. Thus, there are at least three (3) sets of Record Owners evidenced on three (3) separate sets of books and records in the Distribution System.

31. Since Physical Certificates are registered in the name of Cede & Co., Distributions are paid by or at the direction of the Issuer directly to Cede & Co. Each Distribution received by DTC is allocated among DTC Participants in accordance with the ownership records of DTC on Ex Date. Payment of the Distribution to DTC Participants is the responsibility of DTC. Payment of the Distribution to the Customers or Beneficial Owners is the responsibility of DTC Participants. Immediately after DTC wires payment to the accounts of DTC Participants at their New York headquarters, DTC Participants wire funds to each of their brokerage firms' branch offices in every state around the country. The local Customers are then paid the amount of the Distribution to which they are entitled according to their beneficial ownership interests.

32. As there are at least three (3) sets of books and records evidencing record ownership, there are also at least three (3) sets of books and records for every Distribution -- those maintained by the Issuer, by DTC, and by each DTC Participant and their branch offices.

33. After it receives payment from DTC and credits its Customer accounts, each brokerage firm compares the Distribution it has paid out to its Customers, the Beneficial Owners, with the Distribution it has received from DTC. If all records are accurate, and nothing has changed since the Ex Date, the amounts of the Distributions match. If, however, there have been transfers of beneficial ownership which have not been promptly recorded or which have occurred on or around the Ex Date, or if mistakes have been made in the recording or clearing of transactions by DTC or DTC Participants, some brokerage firms may receive an excess payment. It is this type of excess payment, referred to as Excess Receipts by Plaintiff in Intervention, that is presently in issue in this lawsuit.

34. The following example illustrates the foregoing:

On January 1, Customer X (Beneficial Owner) purchases 100 shares of the stock of Texas, Inc., through Broker A, a DTC Participant. Broker A purchases the stock from Broker B, also a DTC Participant, Broker A credits the account of Customer X, also on January 1.

Texas, Inc. declared a dividend of $5 per share with Ex Date of January 2nd. Broker A credits the account of Customer X $500 for the dividend payment. However, the transfer of interest in the stock from Broker B to Broker A has not been recorded, so Broker B is credited by DTC with $500 in dividends.

Broker A has been underpaid, but Broker A goes ahead and pays its Customer. Broker B has been overpaid, or has received Excess Receipts.

35. Most DTC Participants who are underpaid decline to trace individual securities transactions through the Distribution System to identify the DTC Participant that received the Excess Receipts, and fail to utilize the DTC claims procedure to recover the amount of said Excess Receipts. It is best expressed as "it all comes out in the wash" attitude because of the huge volume and the frequency of occurrence. If accounts are to be settled among DTC Participants, such must be done, pursuant to DTC rule, through Cede & Co. and within a short period of time. Moreover, in some cases tracing may not be possible at all because of inadequate or incomplete records. The huge volume of transactions has created such a gnarled system, involving billions of entries on a paper trail, that tracing is generally neither cost-effective nor feasible. In 1987 DTC Participants delivered 9.8 trillion dollars of securities through Book Entry Accounting.

DESCRIPTION OF DISTRIBUTION SYSTEM: BOOK ENTRY CERTIFICATE SYSTEM

36. This part of the Complaint assumes that the Issuer has chosen to issue securities in Book Entry Certificate form. Book Entry Certificates were created to relieve the tremendous paper burden created by Physical Certificates. Under this method of issuing stocks and bonds, the Issuer issues one Physical Certificate (or one Physical Certificate for each maturity and each interest rate), in the name of Cede & Co. as the Record Owner. At closing, the underwriting DTC Participants instruct Cede & Co. to credit their respective accounts with their appropriate portion of Book Entry Certificates in exchange for cash paid directly to the Issuer. Thereafter, all subsequent trades are conducted solely by computerized credits and debits to DTC Participant accounts, and computerized credits and debits by DTC Participants of

the accounts of their Customers, the Beneficial Owners. The Customers are told from the beginning that they are not entitled to receive, nor will they ever receive, Physical Certificates, and that all notices of redemption, tender offers, mergers, stock dividends and cash dividends will be sent only to Cede & Co. DTC Participants are advised by Cede & Co. of such events, and DTC Participants are responsible for providing their Customers as Beneficial Owners with this notice.

37. With respect to Distributions in the Book Entry Certificate System, the Issuer makes all payments directly to Cede & Co. by wire transfer of funds to Cede & Co.'s account at the New York Federal Reserve Bank. Thereafter, the respective interests of DTC Participants are paid as reflected on the books and records of DTC. The beneficial ownership interest of each of the Participants' Customers are paid according to the books and records of the DTC Participants and their branch offices. Thus, as is the case with Physical Certificates, at least three (3) distinct sets of books and records are maintained in connection with Book Entry Certificates, those of the Issuer, of DTC, and of the DTC Participants and their branch offices. Each reflects a different Record Owner.

38. The foregoing describes how most of the Excess Receipts or unclaimed property that is the subject of this lawsuit came into existence. Generally, such Excess Receipts consist of money. However, such property can and does also include Physical Certificates registered to Cede & Co. that are held at DTC.

IX.

PLAINTIFF IN INTERVENTION'S ANALYSIS OF RIGHTS AND RELATIONSHIPS

39. As previously stated, DTC and DTC Participants are Intermediaries functioning as agents of both the Issuer and the Beneficial Owner. Neither DTC nor DTC Participants have claimed any legal ownership interest to the Excess Receipts at issue herein. The brokerage firms cannot reasonably or legally be characterized as either creditors or debtors. Moreover, it makes no sense to analyze rights on the basis of who is the "Record Owner" of the securities or of the Distributions, since the identity of the "Record Owner" varies depending on whose records are being examined.

40. The declaration of a dividend or principal and interest payments basically represents a debt between the Issuer and the Beneficial Owner. The Beneficial Owner is in fact the creditor and the Issuer the debtor. It makes no difference for purposes of legal analysis in this case that the Beneficial Owner may have been paid the Distribution, because all of these Excess Receipts are simple accounting errors occurring on at least three (3) different sets of books and records. All Excess Receipts arise in the context of the chain of transactions between the debtor-Issuer and creditor-Beneficial Owner, and if the existence and location of the Beneficial Owner is unknown, the Excess Receipts, pursuant to *Texas v. New Jersey, supra*, should be remitted to the state of incorporation of the Issuer.

X.

SPECIFIC PROPERTY CLAIMED BY PLAINTIFF IN INTERVENTION

41. In its complaint, Delaware identifies fifteen DTC Participants incorporated in Delaware from which New York has either wrongfully taken or demanded the Excess Receipts at issue herein. One such brokerage firm identified is Dean Witter Reynolds, Inc. According to the actual Report of Abandoned Property filed by Dean Witter Reynolds, Inc. ("Dean Witter Report") with the New York Comptroller, Dean Witter Reynolds, Inc. turned over $354,737.02 to New York in 1982, along with 319 individual stock certificates, which amount represented abandoned property held by said firm at the close of business December 31, 1981. Of that amount, at least $1,478 represented moneys that were attributable to Issuers incorporated in the State of Texas. Texas now claims the right to take possession of such moneys. In addition Texas claims the right to any other Excess Receipts generated by Texas Issuers held or formerly held by the brokerage firms incorporated in the State of Delaware and remitted to or demanded by New York for the period 1978 through 1985.

42. While the amount turned over by Dean Witter Reynolds, Inc. and now claimed by Texas may seem small, it represents but one year of these Excess Receipts reported by a single brokerage firm. The amount of unclaimed property presently in issue in this litigation that Texas is entitled to claim is presently unknown, but is very substantial.

XI.

ADDITIONAL EXCESS RECEIPTS

43. In addition to claiming a portion of the Excess Receipts held or formerly held by the brokerage firms and demanded by or remitted to New York, Plaintiff in Intervention asserts a claim to certain Additional Excess Receipts demanded by or remitted to the State of New York which is not presently at issue in this case, but which should be considered by the Court. As will be described more fully in Parts XII and XIII, *infra*, the property consists of those Additional Excess Receipts held by DTC or its Nominee, Cede & Co. It also consists of Additional Excess Receipts which have arisen in connection with Distributions made by Governmental Issuers, which property is only now being demanded by New York pursuant to a recent statutory amendment.

44. Although Plaintiff in Intervention has diligently attempted to obtain sufficient information to calculate or even estimate the amount of Additional Excess Receipts, it has been unable to do so. Plaintiff in Intervention believes, however, that the amount of such Additional Excess Receipts greatly exceeds the amount of Excess Receipts presently in controversy. If this proceeding remains limited in scope to the Excess Receipts already in issue, it will be the proverbial case of the "tail wagging the dog".

XII.

ADDITIONAL EXCESS RECEIPTS HELD BY DTC

45. As evidenced by its 1987 Annual Report,[6] DTC holds huge amounts of Additional Excess Receipts. Plaintiff in Intervention has been denied access to the books and records of DTC, and therefore does not exactly know exactly how DTC comes to hold Additional Excess Receipts, or how much unclaimed property it has reported and remitted to New York. However, the explanation set forth in the letter of Ms. Patricia Trainer, Associate Counsel of DTC, to Ms. Anne Schwartz, General Counsel, Texas State Treasury Department, dated November 28, 1988, compels the conclusion that enormous amounts of Additional Excess Receipts are held by DTC. Further, the letter supports the conclusion that these Additional Excess Receipts come into existence and acquire their character as unclaimed property in the same basic manner as the Excess Receipts held by DTC Participants. A true and correct copy of said letter is attached to this Complaint as Exhibit "3".

46. DTC describes these Additional Excess Receipts as "Cede Float", which includes "payments on securities no longer on deposit" with DTC. The "Cede Float" occurs "after DTC transfers a securities certificate by endorsement, the transfer from DTC's nominee Cede & Co. is not reregistered on the books of the Issuer until a later time. Prior to reregistration, DTC may receive payments to Cede & Co. from the Issuer." Exhibit "3", p. 1.

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[6]A copy of the 1987 Annual Report of the Depository Trust Corporation has been filed with the Court.

47. Any balance remaining in connection with a Distribution after all DTC Participants' have been paid is "assumed to be applicable to the float and is recorded in the 'Unclaimed Dividends Account'". Again, by DTC's own admission, the Additional Excess Receipts in the "Unclaimed Dividends Account" do not belong to DTC, but are merely held by DTC for the accounts of DTC Participants for the accounts of their Customers, the Beneficial Owners. Additional Excess Receipts remaining in the "Unclaimed Dividends Account" after three years are considered abandoned and are remitted by DTC to New York. Exhibit "3", p. 2.

48. DTC has refused to provide Plaintiff in Intervention with information sufficient to enable Plaintiff in Intervention to begin to estimate the amount of Additional Excess Receipts held by DTC attributable to Issuers incorporated in Texas. However, according to Exhibit "3", Additional Excess Receipts held by Cede & Co. and remitted to New York as abandoned property for a one-year period from January 1, 1985 to November, 1985, included at least $32,511 attributable to Texas Issuers.[7]

49. Plaintiff in Intervention claims the Additional Excess Receipts identified above and all

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[7]This amount is attributable to only nine Issuers incorporated in Texas. In order to establish its claim in intervention to these Additional Excess Receipts, the Texas State Treasury Department sought to obtain copies of the Unclaimed Property Reports filed by DTC with the State of New York and were advised that copies of these Reports would not be released without subpoena. The Treasury then requested information regarding amounts of unclaimed property reported for any one year by DTC to New York attributable to the Issuers identified in the Dean Witter Report which were incorporated in the State of Texas. DTC agreed to provide only the information set forth in Exhibit "3". New York declined to provide any information.

Additional Excess Receipts held by DTC for the period 1978 through 1985 attributable to Issuers incorporated in the State of Texas. This claim is made for the same reason and on the same basis that Texas claims a portion of the funds already at issue in this litigation.

50. When Book Entry Certificates are issued, DTC is in direct contractual relationship with the Issuer and functions as the Issuer's Paying Agent and registrar. Thus, without regard to other claims, DTC is responsible as a Paying Agent under *Texas v. New Jersey, supra*. Paying Agents presently remit owner unknown Distributions to the state of incorporation.

XIII.

ADDITIONAL EXCESS RECEIPTS ATTRIBUTABLE TO GOVERNMENT ISSUES

51. The second type of Additional Excess Receipts results from bonds or debentures issued by Governmental or corporate Issuers. When the Issuer is a governmental entity, Distributions always arise in connection with municipal bonds issued to finance local governmental projects, and consist of principal and interest payments. They have never been reported or remitted to any state. They are now being demanded by New York. Pursuant to amendments to Section 300 of New York's Abandoned Property Law,[8] which became effective April 21, 1987, Distributions attributable to Governmental Issuers held on or after July 1, 1984, are now being demanded by New York if they have not been claimed at the expiration of three years. The New York amendments are set forth in

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[8]New York Abandoned Property Law §300 (McKinney Supp. 1988).

Exhibit "B" attached to Plaintiff in Intervention's Brief in Support of Motion for Leave to File.

52. DTC and DTC Participants have never reported or remitted to any state these Additional Excess Receipts; instead, they have been lying fallow at DTC and at each and every DTC Participant. Until now, there has been no vehicle by which any state could claim and take possession of these Additional Excess Receipts paid into the Distribution System by each of the states' cities, counties and school districts.

53. Plaintiff in Intervention claims the right to take possession of Additional Excess Receipts held by DTC and all DTC Participants attributable to Texas Governmental Issuers for the period 1978 to 1985, the same period covered by this suit. With respect to the Additional Excess Receipts held by the DTC Participants, Plaintiff in Intervention claims that property for the same reason and on the same basis that it claims a portion of the funds already at issue in this litigation.

54. While the amount of its claim to Additional Excess Receipts held by DTC and any DTC Participants attributable to Texas Governmental Issuers is presently unknown, Plaintiff in Intervention estimates that amount may well be in the tens of millions of dollars.

XIV.

PROPRIETY OF CONSIDERING ADDITIONAL EXCESS RECEIPTS

55. Plaintiff in Intervention urges the Court to consider and determine the rights to claim the potentially huge amounts of Additional Excess Receipts described in Parts XI and XII above. The decision of

this Court with respect to the Excess Receipts already before it will conclusively and finally determine the rights of all states to take custodial possession of such Additional Excess Receipts. Such a final determination of rights should not be made without the Court's having first considered arguments which are relevant and peculiar to the Additional Excess Receipts. Inclusion of the Additional Excess Receipts will not broaden the issues or unduly complicate the pending litigation.

56. The Additional Excess Receipts were not initially made part of this litigation because neither Delaware nor New York had any incentive to include them. DTC is incorporated in the State of New York. All Additional Excess Receipts held by DTC would therefore be remitted to New York and all Excess Receipts held by DTC Participants would go to Delaware, under the theory urged in this litigation by Delaware. Under New York's theory of this litigation, New York would take all Additional Excess Receipts and Excess Receipts from both DTC and DTC Participants. By amending its statute, New York has also poised itself to seize all Additional Excess Receipts existing in the form of municipal bond Distributions.

XV.

MERITS OF CLAIM ASSERTED AND RESOLUTION URGED BY PLAINTIFF IN INTERVENTION

57. In *Texas v. New Jersey, supra,* and *Pennsylvania v. New York, supra,* the Court made clear its commitment to resolving unclaimed property controversies in a manner that is both easy to administer and equitable. The resolution urged by Plaintiff in Intervention satisfies both criteria. It is easy to administer, since the identity of the Issuer is

always easily determined. Indeed, the identity of the Issuer is consistently known and reflected on all sets of books and records of all parties to the securities transactions. Moreover, all DTC Participants have regional or branch offices located in every state. These branch offices already maintain a separate set of books and records for local Customers evidencing their local Customers' ownership interests and Distribution receipts. Each branch/regional office also maintains its own bank account, and is individually accountable for year-end profit and loss statements to its New York headquarters. Presently, each branch office also maintains its own "Suspense Accounts" for unclaimed Distributions. These unclaimed funds are returned to their New York headquarters and are then remitted by the DTC Participant to New York. Thus transaction records already exist on a state-by-state basis.

58. The resolution proposed by Plaintiff in Intervention is also by far the most equitable method of distributing the unclaimed property at issue in this lawsuit.[9] This is particularly true with respect to the Additional Excess Receipts consisting of municipal bond Distributions. It is outrageous that moneys held by DTC Participants attributable to the State of Texas and its political subdivisions might be remitted to New York, or any state, other than the State of Texas. It is also particularly egregious that the Additional Excess Receipts held by DTC, which clearly functions merely as a Paying Agent or registrar in these transactions, are being demanded by and will be, without this Court's intervention, remitted to New York.

59. Excess Receipts can legitimately be characterized as nothing more than "distribution slop",

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[9]A number of States have informally expressed an interest in supporting Plaintiff in Intervention.

created by poor accounting practices and record keeping error and attributable in part to the inadequate training given to people responsible for the accounting and the maintenance of books and records. Excess Receipts truly constitute unclaimed property for which no Beneficial Owner or other person with any legal entitlement thereto is ever likely to appear. To determine the rights of various states to claim such Excess Receipts on the basis of the arguments urged by either Delaware or New York will, in essence, elevate form over substance. The respective resolutions sought by both Plaintiff and Defendant are not compelled by, or consistent with, a strict interpretation of legal precedent. Most importantly, however, both such resolutions are simply unfair.

WHEREFORE, Plaintiff in Intervention prays:

1. That Plaintiff in Intervention be allowed to intervene herein;

2. That Additional Excess Receipts held by the Depository Trust Company and demanded by or remitted to New York for the period 1978 through 1985 be included as part of the unclaimed property in controversy in this lawsuit;

3. That Additional Excess Receipts attributable to Governmental Issuers held by the Depository Trust Company and all DTC Participants for the period 1978 through 1985 be included as part of the unclaimed property in controversy in this lawsuit;

4. That the temporary injunction sought by Delaware with respect to the Excess Receipts already at issue herein be extended, for the reasons stated in the Complaint of Delaware, to restrain New York from demanding or taking possession of all Excess Receipts

attributable to Issuers incorporated in the State of Texas or to Texas Governmental Issuers;

5. That Defendant New York be restrained and enjoined from collecting any Excess Receipts and Additional Excess Receipts attributable to Issuers incorporated in the State of Texas or attributable to Texas Governmental Issuers, and from expending any sums collected but presently unspent, consisting of such Excess Receipts and Additional Excess Receipts, until such time as this controversy is resolved;

6. That judgment be entered that the Excess Receipts and Additional Excess Receipts held by DTC and DTC Participants attributable to Issuers incorporated in the State of Texas or to Texas Governmental Issuers is subject only to the claims of the State of Texas under the Texas Property Code;

7. That New York be directed to pay or deliver to Plaintiff in Intervention all of the Excess Receipts and Additional Excess Receipts paid or delivered to New York attributable to Issuers incorporated in the State of Texas and Texas Governmental Issuers which have been abandoned for the applicable dormancy period under the Texas Property Code;

8. That Plaintiff in Intervention be granted such other and further relief as this Court deems just.

Respectfully submitted,

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Attorney General of Texas

_____

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(512) 463-5971

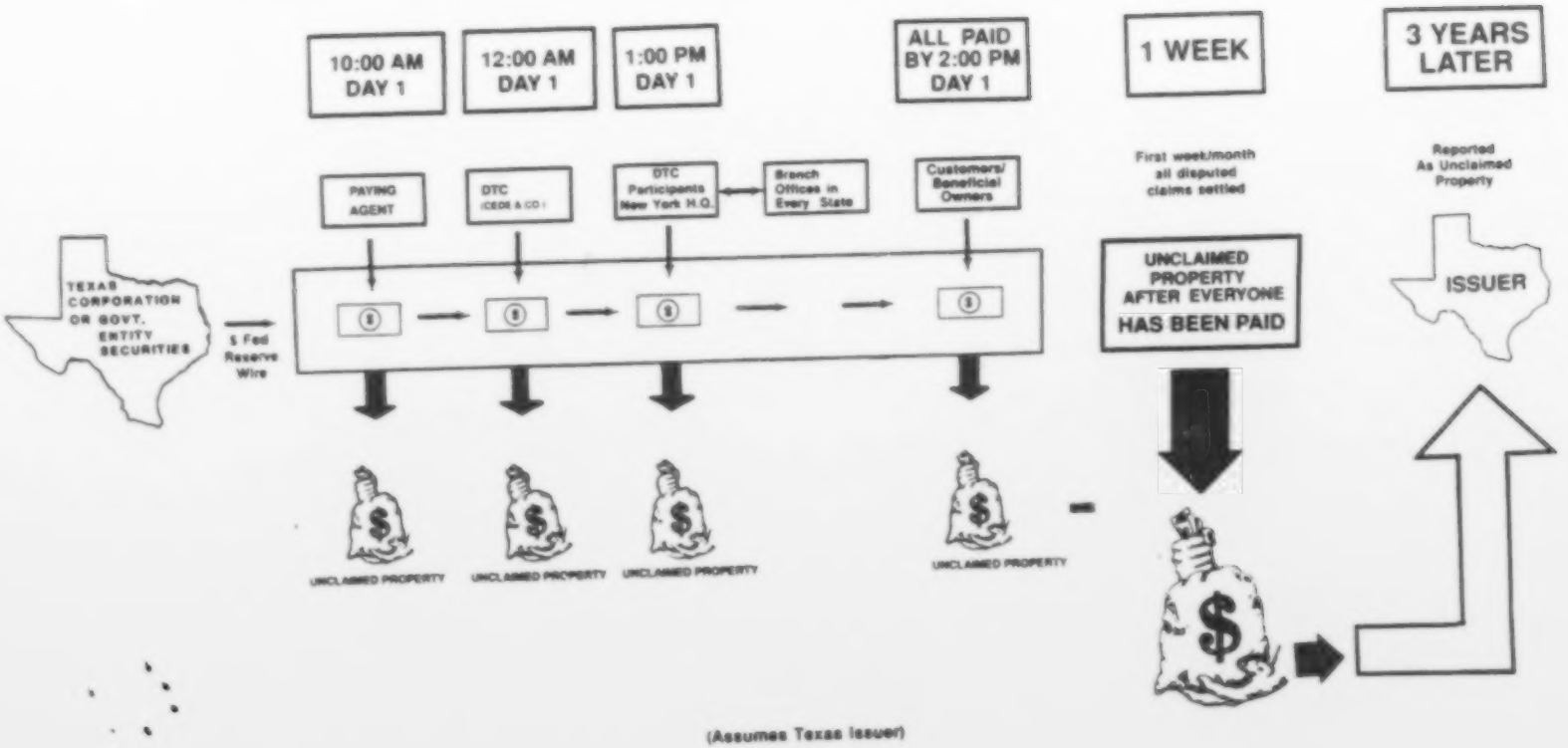
ATTORNEYS FOR THE STATE OF TEXAS

January 6, 1989

COMPLAINT IN INTERVENTION

EXHIBIT 1

PAYMENT FLOWCHART

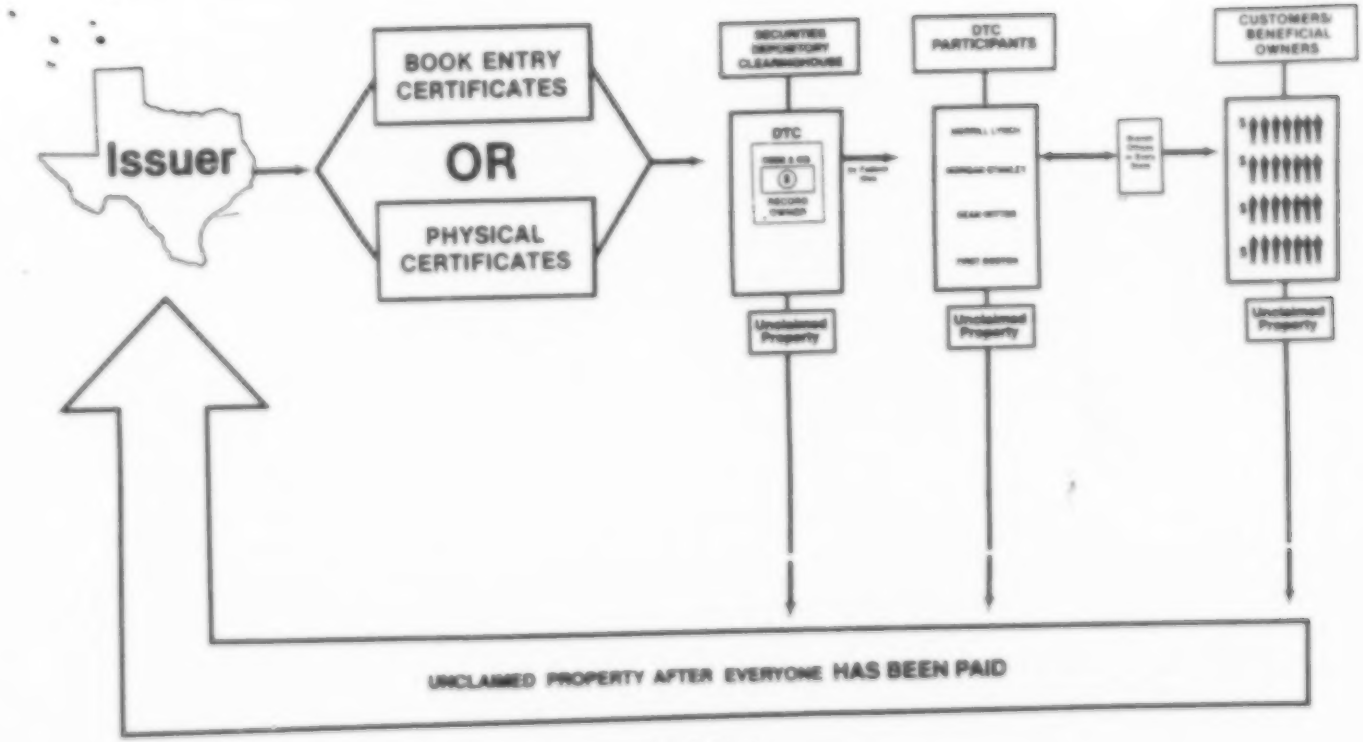


(Assumes Texas Issuer)

COMPLAINT IN INTERVENTION

EXHIBIT 2

THE DISTRIBUTION SYSTEM AND UNCLAIMED PROPERTY



COMPLAINT IN INTERVENTION

EXHIBIT 3

THE DEPOSITORY TRUST COMPANY
55 WATER STREET
NEW YORK, N.Y. 10041

PATRICIA H. TRAINOR
ASSOCIATE COUNSEL

November 28, 1988

BY TELECOPIER AND
FIRST CLASS MAIL

Ann L. Schwartz, Esq.
General Counsel
State of Texas Treasury Department
P.O. Box 12608 Capitol Station
Austin, TX 78711

Dear Ms. Schwartz:

This responds to your request for certain information about The Depository Trust Company ("DTC").

DTC is a registered securities depository engaged in the business of accepting eligible securities issues for deposit for the purpose of effecting book-entry transfers and pledges of such issues, at the direction of its Participants (which are broker-dealers, banks and other financial institutions), and performing certain related functions, including the collection and disbursement to Participants of dividends, interest and principal payments on securities in DTC's custody. DTC, a limited purpose trust company organized under the Banking Law of the State of New York and a member of the Federal Reserve System, is a "clearing corporation" within the meaning of Article 8 of the Uniform Commercial Code (which authorizes book-

entry transactions) and is a clearing agency registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934, as amended.

To protect DTC and facilitate subsequent transfers, certificates for registered issues deposited with DTC are transferred into the name of Cede & Co., a New York partnership which is the nominee of DTC. Neither DTC nor Cede & Co. has any beneficial interest in the issues deposited with DTC. Because the securities are registered in the name of Cede & Co., DTC is the first recipient of distributions paid on these securities. Each distribution includes payments on securities still in DTC's custody on record date and may include payments on securities no longer on deposit that are known as the "Cede float." "Cede float" exists in most issues. It occurs when, after DTC transfers a securities certificate from its custody by endorsement, the transfer from DTC's nominee Cede & Co. is not registered on the books of the issuer until a later time. Prior to the re-registration, DTC may receive payments to Cede & Co. from the issuer.

After Cede & Co. pays all Participants who DTC accounts were credited with securities in DTC's custody on the record date, any remaining balance is assumed to be applicable to the Cede float. That balance is therefore recorded in a "Unclaimed Dividends" account. The property belongs, not to DTC, but to the unknown beneficial (not record) owner on the record date. DTC subsequently honors claims made by the beneficial owner or its representative. Pursuant to the Abandoned Property Law of the State of New York, after three years distributions remaining in the Unclaimed Dividends account that are deemed abandoned escheat and are sent by DTC to the Comptroller of the State of New York. Tardy claimants coming forward after escheatment are entitled by law

to recover distributions on valid claims (or proceeds of sale in the case of stock distributions) from New York State.

Certain DTC Participants are incorporated in the State of Texas. Certain issuers whose securities are eligible for deposit at DTC are believed by us to be incorporated in the State of Texas. At your request we have determined from our files that distributions paid to Cede & Co. by the following corporations you identified as Texas corporations were escheated by us to the State of New York as abandoned property in November, 1985, in the amounts shown:

Issuer	CUSIP Number	Amount Escheated 1985
Church's Fried Chicken	171583107	2,698.08
Enserch Corp.	293567103	1,245.08
Gulf States Utilities	402550107	11,206.00
Houston Natural Gas	442272100	15,208.58
Keystone International Inc.	493503106	206.40
Justin Industries Inc.	482171107	76.50
Moran Energy	616457101	247.76
National BancShares Group (Corp)	632593109	486.36
Pioneer Corporation	723645107	1,139.24

We trust the above information will be of assistance to you. If you have any further questions, please do not hesitate to call me at (212) 898-3230.

Very truly yours,

s/Patricia Trainer

PHT/vs

NO. 111 Original

* * *

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1988

* * *

STATE OF DELAWARE, Plaintiff

STATE OF TEXAS, Plaintiff in Intervention

V.

STATE OF NEW YORK, Defendant

* * *

BRIEF OF THE STATE OF TEXAS IN SUPPORT OF MOTION FOR LEAVE TO FILE COMPLAINT IN INTERVENTION

* * *

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NO. 111 Original

* * *

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1988

* * *

STATE OF DELAWARE, Plaintiff

STATE OF TEXAS, Applicant for Intervention

V.

STATE OF NEW YORK, Defendant

* * *

BRIEF OF THE STATE OF TEXAS IN SUPPORT OF MOTION FOR LEAVE TO FILE COMPLAINT IN INTERVENTION

On May 31, 1988, the Court granted the motion of Plaintiff State of Delaware ("Delaware") for leave to file a complaint invoking the original jurisdiction of this Court to resolve a controversy between Delaware and Defendant State of New York ("New York") as to which state is entitled to claim and take possession of certain unclaimed intangible personal property. Applicant State of Texas ("Texas") seeks leave to intervene so that Texas can assert its claim to a portion of this unclaimed property, and to additional unclaimed property which should rightfully be considered by the Court in connection with this lawsuit.

I.

STATEMENT OF THE CASE

The State of Texas has filed its Complaint in Intervention ("Complaint"). The Complaint fully sets forth the entitlement of Texas to the unclaimed property at issue referred to by Texas as "Excess Receipts". These Excess Receipts consist of Distributions[10] received by brokerage firms incorporated in Delaware. There is no known owner entitled to claim these Excess Receipts. They remain in "Suspense Accounts" at the brokerage firm for three years, and thereafter are currently being remitted to New York.

Delaware and New York assert conflicting claims to these Excess Receipts. Both base their respective claims on the rulings of this Court in *Texas v. New Jersey*, 379 U.S. 674 (1965) and *Pennsylvania v. New York*, 407 U.S. 206 (1972). These cases establish the principle that unclaimed property is remittable to the state of the last known address of its owner. If that address is unknown, the property is to be remitted to the state of incorporation of the debtor. Delaware argues that Excess Receipts should be remitted to Delaware as the state of incorporation of the brokerage firm holding such funds since the identity of the Beneficial Owner of the Excess Receipts is unknown. New York contends that the Excess Receipts should be returned to that state, for the reason that the Excess Receipts are owed to other brokerage firms, and most brokerage firms have New York trading addresses.

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[10]In the Complaint, Texas has defined certain terms. Those definitions, which are also employed in the Brief, are incorporated herein by reference.

Texas also claims a portion of these same Excess Receipts under the holding of this Court in *Texas v. New Jersey, supra*, and *Pennsylvania v. New York, supra*, because the Excess Receipts constitute a debt of the Issuer owed to the securities' Beneficial Owner. If the identity and location of the Beneficial Owner are unknown, the state of incorporation of the Issuer is entitled to collect the Excess Receipts under that state's unclaimed property law. Under this theory, Distributions generated by Texas Issuers whose Beneficial Owners are unknown should be returned to the State of Texas.

Texas asserts its claim pursuant to Chapter 72, Tex. Prop. Code Ann. 72.001, *et seq.* (Vernon Supp. 1989), ("Texas Property Code") which provides for the custodial taking of abandoned or unclaimed tangible or intangible personal property when the existence and location of the owner of the property is unknown to the holder of the property, and no claim to said property has been asserted within the applicable dormancy period, which for most types of personal property is three years.[11] A copy of Chapter 72 *et seq.* of the Texas Property Code is attached hereto as Exhibit "A".

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[11]Since 1962, the State of Texas has provided by statute that the State shall take custodial possession of unclaimed or abandoned property of unknown owners. Chapter 72 of the Property Code, repealed and replaced Tex.Rev.Civ.Stat.Ann. art. 3272a (Vernon 1981).

II.

SPECIFICATION OF POINTS

1. INTERVENTION IS PROPER BECAUSE TEXAS HAS SATISFIED THE REQUIREMENTS FOR INTERVENTION SET FORTH IN RULE 24(a)(2), FEDERAL RULES OF CIVIL PROCEDURE, AND IS THEREFORE ENTITLED TO INTERVENE AS A MATTER OF RIGHT.

2. PERMISSIVE INTERVENTION IS APPROPRIATE IN THIS CASE PURSUANT TO RULE 24(b), FEDERAL RULES OF CIVIL PROCEDURE.

3. INTERVENTION IS PROPER UNDER THE PRINCIPLES ESTABLISHED BY THIS COURT IN *WESTERN UNION TELEGRAPH COMPANY v. PENNSYLVANIA* AND *TEXAS v. NEW JERSEY*.

ARGUMENT

1. INTERVENTION IS PROPER BECAUSE TEXAS HAS SATISFIED THE REQUIREMENTS FOR INTERVENTION SET FORTH IN RULE 24(b)(2), FEDERAL RULES OF CIVIL PROCEDURE, AND IS THEREFORE ENTITLED TO INTERVENE AS A MATTER OF RIGHT.

Rule 9.2 of the Supreme Court directs that the Federal Rules of Civil Procedure, "where their application is appropriate, may be taken as a guide to procedure in original actions." Where a non-party seeks to intervene in an original action, the standards governing the propriety of intervention are found in Rule 24, Fed. R. Civ. Pro.

Pursuant to Rule 24(a)(2), Fed. R. Civ. Pro., anyone who timely applies shall be permitted to intervene in the action:

> (2) When the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

By this intervention, Texas claims a portion of the specific unclaimed property or Excess Receipts which constitute the subject matter of this action. As stated in its Complaint, the efforts of Texas to secure information from New York and various brokerage firms regarding the amounts and sources of unclaimed property remitted to New York have met considerable resistance. Texas has, however, succeeded in obtaining the Dean Witter Report for the year ending December 31, 1981. This report reflects the payment to New York by Dean Witter Reynolds, Inc. of at least $1,478.00 attributable to Issuers incorporated in the State of Texas. If one adds to this amount the Excess Receipts attributable to Texas Issuers remitted to New York by all brokerage firms incorporated in Delaware for the years 1978 through 1985, the total amount of Excess

Receipts presently claimed by Texas, while presently unknown, is substantial and sufficient to establish the propriety of Texas' intervention as a matter of right.

Even before adoption of Rule 9.2, this Court allowed states to intervene in unclaimed property suits when they were claiming an interest in the property that was the subject of the controversy. The State of Florida was permitted to intervene in *Texas v. New Jersey, supra*, on a claim that it had the right to escheat or take possession of a portion of the property involved therein. Illinois was denied intervention in *Texas v. New Jersey, supra*, for the reason that, unlike Florida in that case and Texas here, Illinois claimed no interest in the property which was the subject of the litigation.

The right of Texas to claim and take possession of these Excess Receipts will be conclusively determined by the Court's decision in this proceeding. If the argument of either of the existing parties is accepted, Texas will be forever precluded from claiming or taking custodial possession of unclaimed property of this nature. The claim asserted by Texas is in direct conflict with the claims of Delaware and New York. Under the resolution proposed by Texas, each of the fifty states, rather than just Delaware or New York, will have an opportunity to share in the allocation of Excess Receipts. Such resolution will inevitably reduce the amount of Excess Receipts subject to the claims of the existing parties. Neither Delaware nor New York, therefore, has any incentive to advocate the claim urged by Texas. Clearly, the interests of Texas are not adequately represented by the existing parties.

Texas respectfully submits that the standards for determining whether Texas can intervene as a matter of right in this case have been satisfied.

2. PERMISSIVE INTERVENTION IS APPROPRIATE IN THIS CASE PURSUANT TO RULE 24(b), FEDERAL RULES OF CIVIL PROCEDURE.

Alternatively, Texas urges the Court to exercise its discretion to allow permissive intervention in favor of Texas pursuant to Rule 24(b), Fed. R. Civ. Pro. Permissive intervention is appropriate because, without the intervention of Texas, matters involving issues of fact and law common to those presently in this lawsuit, and involving potentially hundreds of millions of dollars, will of necessity be decided by implication. There will be no complete presentation of the issues, but rather a microscopic misfocus on one small piece of the Distribution System puzzle. There is simply too much at stake for the Court to allow this to occur.

As detailed in the proposed Complaint in Intervention, Texas seeks to have this Court consider, as subject property in this lawsuit, certain Additional Excess Receipts. These Additional Excess Receipts consist of: (a) excess receipts presently being remitted to New York which are held by the Depository Trust Company; and (b) excess receipts arising from unclaimed principal and interest payments on corporate and governmental issuer's bonds which have never in the past been remitted to any state, but which are now claimed by New York pursuant to recent amendments to §300 of the New York Unclaimed Property Laws. A copy of the amendments is attached hereto as Exhibit "B". The amount of the Additional Excess Receipts Texas seeks to bring into this lawsuit greatly exceeds the amount of Excess Receipts presently in controversy. If the Additional Excess Receipts are considered, the amount Texas, and other states, may claim may run into the hundreds of millions of dollars.

The Court's decision regarding disposition of the Additional Excess Receipts will require an analysis of law and facts which already are, or will inevitably be, before the Court. The Additional Excess Receipts come into existence and acquire their character in the exact same manner as the Excess Receipts already under consideration. Unclaimed property arises each time money or securities pass through each Intermediary in the Distribution System. As Exhibit "3" to Texas' Complaint in Intervention demonstrates, the unclaimed property is exactly the same whether the Intermediary is DTC or Dean Witter. Moreover, the unclaimed property is the same, whether it arises in connection with equity or debt transactions. One-half of Wall Street is the stock market, and the other half, the bond market. Inclusion of the Additional Excess Receipts therefore merely brings into this lawsuit one more Intermediary, and the second half of the securities industry. Clearly, Texas claims a portion of the Additional Excess Receipts for the same reason and on the same legal and factual basis that it claims a portion of the Excess Receipts already at issue.

The principal authorities relied upon by Texas, Delaware and New York in support of all claims are identical. Each state correctly cites *Texas v. New Jersey, supra*, and *Pennsylvania v. New York, supra*, as the controlling precedent, and argues that the principles of law established in those cases compel the result urged by each. All three theories are arguably consistent with these prior rulings, depending upon how the law set forth therein is interpreted and applied to the facts of this case.

Additionally, the facts which Texas will develop in order to support its claim are either already before the Court or will inevitably be developed during the course of these proceedings. Delaware and New York have each offered a narrow, piecemeal description of

the Distribution System out of which Excess Receipts arise. As a result, the existing parties have presented the issues in an unrealistically limited, and perhaps misleading, manner. New York and Delaware are disinclined to broaden this picture because Wall Street and DTC are located in New York, and most brokerage firms in the United States are incorporated in Delaware. Nevertheless, the Court must analyze all the facts detailed in Texas' Complaint in Intervention in order to meaningfully address the proper allocation of unclaimed Distributions and resolve that issue in a manner that is fair, equitable and otherwise consistent with *Texas v. New Jersey, supra*, and *Pennsylvania v. New York, supra*. Clearly, the claim of Texas to both the Excess Receipts and the Additional Excess Receipts involve questions of law and fact common to those already present in this litigation. Intervention by Texas will therefore not unduly delay or prejudice the adjudication of the rights of the original parties.

The right of Texas to claim and take custodial possession of the Excess Receipts will be conclusively determined by the Court's ruling in this case whether or not Texas is permitted to intervene. The disposition of the Additional Excess Receipts will be similarly determined, even if the Court does not specifically address the Additional Receipts or permit the requested Intervention. However, if Texas is not permitted to intervene and assert its claim, the likelihood is great that development of the facts, the law, and the analysis of same will be incomplete and artificial. Texas urges the Court to resist the temptation to allow rights of this magnitude, involving hundreds of millions of dollars, to be decided by implication without the benefit of the strong advocacy of all parties with an interest in or claim to the property.

Pursuant to Rule 24(b), Fed. R. Civ. Pro., the Court may exercise its discretion and allow permissive intervention if an applicant's claim involves issues of fact or law common to those already present in the litigation and the intervention will not unduly delay or prejudice the adjudication of the rights of the existing parties. Texas respectfully submits that the criteria set forth in this Rule have been satisfied in this case, and that the requested intervention should be allowed.

3. INTERVENTION IS PROPER UNDER THE PRINCIPLES ESTABLISHED IN *WESTERN UNION TELEGRAPH COMPANY v. PENNSYLVANIA* AND *TEXAS v. NEW JERSEY.*

In *Western Union Telegraph Company v. Pennsylvania*, 368 U.S. 71 (1961), the Court recognized the difficulties inherent in resolving controversies among different states over their respective rights to claim and take possession of unclaimed intangible personal property, and concluded that the United States Supreme Court was the appropriate forum in which "all the states that want to do so can present their claims for consideration and final, authoritative determination." *Id.* at 79. Texas seeks by this Intervention an opportunity to so present its claim.

In *Texas v. New Jersey, supra*, the Court expressed its commitment to resolving unclaimed property controversies in a manner that is both easy to administer and equitable, and adopted a rule that would "tend to distribute escheats among the states in proportion to the commercial activities of their residents." *Id.* at 681.

The resolutions proposed by Delaware and New York are wholly at odds with the public policy

established by the Court. The practical result of the formulae suggested will be to reward either New York for the fact that Wall Street is located in New York City and most brokerage firms have trading addresses there, or Delaware for the tax incentives it provides which have caused many corporations, and most brokerage firms, to incorporate in that state.

The solution proposed by Texas, on the other hand, recognizes the commercial activities of the states themselves and their political subdivisions, and of their corporate citizens, and apportions the Excess Receipts and Additional Excess Receipts according to such activities. It allows all fifty states to claim their pro rata shares of unclaimed property put into the Distribution System by their corporate and Governmental Issuers. Unclaimed Additional Excess Receipts generated by political subdivisions such as the Austin Independent School District and the City of Houston should be returned to Texas, whose taxpayers paid off the indebtedness, rather than New York or Delaware. Absent intervention by Texas, however, there will be no party before the Court to advocate such a resolution. Texas respectfully submits that intervention in this suit by Texas is appropriate, under the principles of law established in *Western Union Telegraph Company v. Pennsylvania, supra*, and *Texas v. New Jersey, supra*.

III.

CONCLUSION

For the reasons stated, the Motion of the State of Texas for Leave to Intervene as Plaintiff should be granted.

Respectfully submitted,

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BRIEF OF THE STATE OF TEXAS IN SUPPORT OF MOTION FOR LEAVE TO FILE COMPLAINT IN INTERVENTION

EXHIBIT A

INDEX TO PROPERTY CODE

As Amended by S.B. 581, 70th Legislature, Regular Session 1987

Effective September 1, 1987

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PROPERTY CODE

CHAPTER 71. ESCHEAT OF PROPERTY

SUBCHAPTER A. GENERAL PROVISIONS

Section 71.001. Escheat

(a) If an individual dies intestate and without heirs, the real and personal property of that individual is subject to escheat.

(b) "Escheat" means the vesting of title to property in the state in an escheat proceeding under Subchapter B.

Section 71.002. Presumption of Death

An individual is presumed dead for the purpose of determining if the individual's real or personal property is subject to escheat if the individual:

(1) is absent from the individual's place of residence for seven years or longer; and

(2) is not known to exist.

Section 71.003. Presumption of Intestacy

An individual is presumed to have died intestate if, on or before the seventh anniversary of the date of the individual's death, the individual's will has not been recorded or probated in the county where the individual's property is located.

Section 71.004. Presumption of Death Without Heirs

An individual is presumed to have died leaving no heirs if for the seven-year period preceding the court's determination:

(1) a lawful claim to the individual's property has not been asserted; and

(2) a lawful act of ownership of the individual's property has not been exercised.

Section 71.005. Act of Ownership

For the purposes of this chapter, an individual exercises a lawful act of ownership in property by, personally or through an agent, paying taxes to this state on the property.

Section 71.006. Review of Probate Decree

(a) If the state claims that an estate that has been administered in probate court in this state is subject to escheat, the state may have the jugment of the probate court reviewed by filing a petition in district court alleging that the administration of the estate was obtained by fraud or mistake of fact.

(b) The case shall be tried in accordance with the law for the revision and correction of a decree of the probate court.

[Sections 71.007 to 71.100 reserved for expansion]

SUBCHAPTER B. ESCHEAT PROCEEDINGS

Section 71.101. Petition for Escheat

(a) If the attorney general or a district attorney, criminal district attorney, or county attorney is informed or has reason to believe that real or personal property is subject to escheat under this chapter, the attorney may file a sworn petition requesting the escheat of the property and requesting a writ of possession for the property.

(b) The petition must contain:

(1) a description of the property;

(2) the name of the deceased owner of the property;

(3) the name of the tenants or persons claiming the estate, if known; and

(4) the facts supporting the escheat of the estate.

(c) If the petition is filed by a person other than the attorney general, the person shall send to the attorney general written notice of the filing and a copy of the petition to permit the attorney general to elect to participate on behalf of the state.

(d) An action brought under this section is governed by the procedure relating to class actions provided by the Texas Rules of Civil Procedure.

(e) A petition filed under this section is not subject to an objection relating to misjoinder of parties or causes of action.

Section 71.102. Citation

(a) If a petition is filed under this subchapter, the district clerk shall issue citation as in other civil suits to:

(1) each defendant alleged by the petition to possess or claim the property that is the subject of the petition;

(2) any person required by this chapter to be cited; and

(3) persons interested in the estate.

(b) The citation required by Subdivision (3) of Subsection (a) must be published as required for other civil suits and must:

(1) briefly state the contents of the petition; and

(2) request all persons interested in the estate to appear and answer at the next term of the court.

Section 71.103. Party to Proceeding

(a) A person who exercises a lawful act of ownership in property that is the subject of an escheat must be made a party to the proceeding by:

(1) personal service of citation if the person is a resident of this state and the person's address can be obtained by reasonable diligence; or

(2) service of citation on a person's agent if the person is a nonresident or a resident who cannot be found and the agent can be found by the use of reasonable diligence.

(b) For the purposes of this section, reasonable diligence includes an inquiry and investigation of the records of the office of the tax assessor-collector of the county in which the property sought to be escheated is located.

Section 71.104. Appearance of Claimants

Any person, whether named in the escheat petition or not, who claims an interest in property that is the subject of an escheat proceeding may appear, enter a pleading, and oppose the facts stated in the petition.

Section 71.105. Trial

(a) If a person appears and denies the state's right to the property or opposes a material fact of the petition, the court shall try the issue as any other issue of fact.

(b) The court may order a survey as in other cases in which the title or the boundary of the land is in question.

Section 71.106. Default Judgment

If citation is issued in accordance with Section 71.102 and no person answers within the period provided by the Texas Rules of Civil Procedure, the court shall render a default judgment in favor of the state.

Section 71.107. Judgment for State

(a) If the court renders a judgment for the state finding that an intestate died without heirs, the property escheats to the state and title to the property is considered to pass to the state on the date of death of the owner as established by the escheat proceeding. The court may award court costs to the state.

(b) If the judgment involves real property, the state may sell the property under the general laws governing the sale of Permanent School Fund lands and, after the second anniversary of the date of the final judgment, the court shall issue a writ of possession of the property.

(c) If the judgment involves personal property, the court shall issue a writ of possession that contains an adequate description of the property as in other cases for recovery of personal property.

(d) When the record of the escheat proceeding reflects that a lienholder or his predecessor received actual or constructive notice of the escheat proceeding, the entry of the judgment in the escheat proceeding

will either satisfy or extinguish any lien which the lienholder or his predecessor claimed or could have claimed on the escheated property at the escheat proceeding.

(e) The sheriff, constable, court clerk, or other officer appointed by the judge in an escheat proceeding shall execute a writ of possession by filing the writ with the deed or map records of the county when the escheated property relates to realty and by serving the writ on any holder, tenant, or occupant of any escheated property. Additionally, the person who executes a writ of possession shall either:

(1) post the writ for at least three consecutive weeks on the door or posting board of the county courthouse in the county where the proceeding was conducted or in the county where the property is located; or

(2) in the case of real property, post the writ for at least two consecutive weeks at a reasonably conspicuous place on the realty; or

(3) publicize the writ in any other fashion ordered by the court.

(f) After validly executing a writ of possession, the sheriff, constable, court clerk, or other appointed officer shall note the method of the clerk to be filed in the court records of the escheat proceeding.

Section 71.108. Costs Paid by State

If the property does not escheat, the state shall pay court costs. The clerk of the court shall certify the amount of the costs, and when the certificate is filed in the office of the comptroller of public accounts, the comptroller shall issue a warrant for the amount of the costs.

Section 71.109. Appeal; Writ of Error

A party who appeared at an escheat proceeding may appeal the judgment rendered or may file an application for a writ of error on the judgment. The attorney general or other person acting on behalf of the state in the escheat proceeding may make an appeal or file the writ.

[Section 71.110 to 71.200 reserved for expansion]

SUBCHAPTER C. DISPOSITION OF ESCHEATED PROPERTY

Section 71.201. Seizure and Sale of Personal Property

(a) If personal property escheated to the state, the court shall issue to the sheriff a writ that commands the sheriff to seize the escheated property.

(b) The sheriff shall:

(1) dispose of the personal property at public auction in accordance with the law regarding the sale of personal property under execution; and

(2) deposit into the State Treasury the proceeds of the sale, less court costs.

Section 71.202. Disposition of Real Property

(a) Real property that escheats to the state under this title before January 1, 1985, becomes a part of the permanent school fund. Real property that escheats to the state on or after January 1, 1985, is held in trust by the Commissioner of the General Land Office for the use and benefit of the foundation school fund. The revenue from all leases, sales, and use of land held for the foundation school fund shall be deposited to the credit of the foundation school fund.

(b) Before the 91st day after the day on which a judgment that provides for the recovery of real property is rendered, the clerk of the district court rendering the judgment shall send to the Commissioner of the General Land Office:

(1) a certified copy of the judgment; and

(2) notice of any appeal of that judgment.

(c) The commissioner shall list real property as escheated foundation school fund land or permanent school land as appropriate when the commissioner receives:

(1) a certified copy of a judgment under which the property escheats to the

state and from which appeal is not taken; or

(2) a certified copy of notice of the affirmance on appeal of a judgment under which the property escheats to the state.

Section 71.203. Account of Escheated Property

The comptroller shall keep an account of the money paid to and real property vested in this state under this chapter.

[Sections 71.204 to 71.300 reserved for expansion]

SUBCHAPTER D. RECOVERY OF ESCHEATED PROPERTY

Section 71.301. Suit for Escheated Personal Property

(a) If personal property of a deceased owner escheats to the State under this chapter and is delivered to the state, a person who claims the property as an heir, devisee, or legatee of the deceased may file suit against the state in a district court of Travis County, Texas. The suit must be filed on or before the fourth anniversary of the date of the final judgment of the escheat proceeding.

(b) The petition must state the nature of the claim and request that the money be paid to the claimant.

(c) A copy of the petition shall be served on the attorney general not later than the

20th day preceding the return day of the process.

Section 71.302. Recovery of Personal Property

(a) If in a suit filed under Section 71.301 the court finds that a claimant is entitled to recover personal property, the court shall order the comptroller to issue a warrant for payment of the claim without interest or costs.

(b) A copy of the order under seal of the court is sufficient voucher for issuing the warrant.

Section 71.303. Suit for Escheated Real Property

(a) If real property escheats to the state under this chapter, a person who was not personally served with citation in the escheat proceedings may file suit for all or a part of the property. The suit must be filed not later than the second anniversary of the date of the final judgment in the escheat proceedings.

(b) To the extent the claimant is adjudged to be the owner of all or a part of the property, the state is divested of the property.

Section 71.304. State as Party in Suit for Assets

A suit brought for the collection of assets delivered to the State Treasurer under this chapter must be brought in the name of this state.

CHAPTER 72. ABANDONMENT OF PERSONAL PROPERTY

SUBCHAPTER A. GENERAL PROVISIONS

Section 72.001. Application of Chapter

(a) Tangible or intangible personal property is subject to this chapter if it is covered by Section 72.101 and;

(1) the last known address of the apparent owner, as shown on the records of the holder, is in this state;

(2) the records of the holder do not disclose the identity of the person entitled to the property, and it is established that the last known address of the person entitled to the property is in this state;

(3) the records of the holder do not disclose the last known address of the apparent owner, and it is established that:

(A) the last known address of the person entitled to the property is in this state; or

(B) the holder is a domiciliary or a government or governmental subdivision or agency of this state and has not previously paid or delivered the property to the state of the last known address of the

apparent owner or other person entitled to the property;

(4) the last known address of the apparent owner, as shown on the records of the holder, is in a state that does not provide by law for the escheat or custodial taking of the property or is in a state in which the state's escheat or unclaimed property law is not applicable to the property, and the holder is a domiciliary or a government or governmental subdivision or agency of this state;

(5) the last known address of the apparent owner, as shown on the records of the holder, is in a foreign nation and the holder is a domiciliary or a government or governmental subdivision or agency of this state; or

(6) the transaction out of which the property arose occurred in this state; and

(A) the last known address of the apparent owner or other person entitled to the property is:

(i) unknown; or

(ii) in a state that does not provide by law for the escheat or custodial

taking of the property or in a state in which the state's escheat or unclaimed property law is not applicable to the property; and

(B) the holder is a domiciliary of a state that does not provide by law for the escheat or custodial taking of the property or a state in which the state's escheat or unclaimed property law is not applicable to the property.

(b) This chapter supplements Chapter 71, and either chapter may be followed to the extend applicable.

(c) This chapter applies to property held by life insurance companies with the exception of unclaimed funds, as defined by Section 3, Article 4.08, Insurance Code, held by those companies that are subject to Article 408, Insurance Code.

(d) A holder of property presumed abandoned under this chapter is subject to the procedures of Chapter 74.

(e) In this chapter, a holder is a person, wherever organized or domiciled, who is:

(1) in possession of property that belongs to another;

(2) a trustee; or

(3) indebted to another on an obligation.

(f) In this chapter, a corporation shall be deemed to be a domiciliary of the state of its incorporation.

[Section 72.002-72.100 reserved for expansion]

SUBCHAPTER B. PRESUMPTION OF ABANDONMENT

Section 72.101. Personal Property Presumed Abandoned

(a) Except as provided by this section and Section 72.102, personal property is presumed abandoned, if for longer than three years:

(1) the existence and location of the owner of the property is unknown to the holder of the property; and

(2) according to the knowledge and records of the holder of the property, a claim to the property has not been asserted or an act of ownership of the property has not been exercised.

(b) Except as provided by Subsection (c), (d), and (f), stock or another intangible ownership interest in a business association, the existence of which is evidenced by records available to the association, is presumed abandoned if:

(1) a dividend, distribution, or other sum payable as a result of the interest has remained unclaimed by the owner for five years and the owner within five years has not:

(A) communicated in writing with the association regarding the interest or a dividend, distribution, or other sum payable as a result of the interest; or

(B) otherwise communicated with the association regarding the interest or a dividend, distribution, or other sum payable as a result of the interest, as evidenced by a memorandum or other record on file with the association prepared by the association or its agents; and

(2) the business association does not know the location of the owner at the end of the five-year period.

(c) At the expiration of a five-year period following the failure of the owner to claim a dividend, distribution, or other sum payable to the owner as a result of the interest, the interest is not presumed abandoned unless there have been at least five dividends, distributions, or other sums paid during the five-year period, the period leading to a presumption of abandonment, commences on the date that payment of the first unclaimed

dividend, distribution, or other sum became due and payable. If five dividends, distributions, or other sums are not paid during the presumptive period, the period continues to run until there have been five dividends, distributions, or other sums that have not been claimed by the owner.

(d) The running of the five-year period of abandonment ceases immediately upon the occurrence of a communication referred to in Subsection (b). If any future dividend, distribution, or other sum payable to the owner as a result of the interest is subsequently not claimed by the owner, a new period of abandonment commences and relates back to the time that dividend, distribution, or other sum became due and payable.

(e) At the time an interest is presumed abandoned under this section, any dividend, distribution, or other sum then held for or owing to the owner as a result of the interest, and not previously presumed abandoned, is presumed abandoned.

(f) Any stock or other intangible ownership interest enrolled in a plan that provides for the automatic reinvestment of dividends, distributions, or other sums payable as a result of the interest is subject to the presumption of abandonment as provided by Subsection (a), except that the applicable period of abandonment is five years.

Section 72.102. Traveler's Check and Money Order

(a) A traveler's check or money order is not presumed to be abandoned under this chapter unless:

(1) the records of the issuer of the check or money order indicate that it was purchased in this state;

(2) the issuer's principal place of business is in this state and the issuer's records do not indicate the state in which the check or money order was purchased; or

(3) the issuer's principal place of business is in this state, the issuer's records indicate that the check or money order was purchased in another state, and the laws of that state do not provide for the escheat or custodial taking of the check or money order.

(b) A traveler's check to which Subsection (a) applies is presumed to be abandoned on the latest of:

(1) the 15th anniversary of the date on which the check was issued;

(2) the 15th anniversary of the date on which the issuer of the check last received from the owner of the check written communication concerning the check; or

(3) the 15th anniversary of the date of the last writing, on file with the issuer, that indicate the owner's interest in the check.

(c) A money order to which Subsection (a) applies is presumed abandoned on the latest of:

(1) the fifth anniversary of the date on which the money order was issued;

(2) the fifth anniversary of the date on which the issuer of the money order last received from the owner of the money order written communication concerning the money order; or

(3) the fifth anniversary of the date of the last writing, on file with the issuer, that indicates the owner's interest in the money order.

Section 72.103. Preservation of Property

A holder of abandoned property shall preserve the property and may not by any procedure, including a deduction for service, maintenance, or other charge, transfer, convert, or reduce the property to the profits or assets of the holder.

CHAPTER 73. INACTIVE ACCOUNTS HELD BY BANKING ORGANIZATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Section 73.001. Definitions and Application of Chapter

(a) In this chapter:

(1) "Account" means funds deposited with a depository in a checking, time, interest, or savings account.

(2) "Depositor" means a person who has an ownership interest in an account.

(3) "Owner" means a person who has an ownership interest in a safe deposit box.

(4) "Holder" means a depository.

(b) This chapter supplements Chapter 71, and either chapter may be followed to the extent applicable.

(c) Any property, other than an account or safe deposit box, held by a depository is subject to the abandonment provisions of Chapter 72.

(d) A holder of accounts or safe deposit boxes presumed inactive under this chapter is subject to the procedures of Chapter 74.

Section 73.002. Depository

For the purposes of this chapter, a depository is a bank, savings and loan association, or other banking organization that:

(1) receives and holds a deposit of money or the equivalent of money in banking practice or other personal property in this state; or

(2) receives and holds such a deposit or other personal property in another state for a person whose last known residence is in this state.

Section 73.003. Preservation of Inactive Account or Deposit Box

(a) A depository shall preserve an inactive account that is inactive, and the contents of a deposit box that is inactive. The depository may not by any procedure, including the imposition of a service charge, transfer, convert, or reduce such an account or the contents of such a box to the profits or assets of the depository.

(b) An account is inactive if for more than one year there has not been a debit or credit to the account because of an act by the depositor or an agent of the depositor, other than the depository. A safe deposit box is inactive if the rental on the box is delinquent for more than one year.

(c) This section does not affect the provisions of Article 6, Chapter IX, The Texas

Banking Code of 1943 (Article 342-906, Vernon's Texas Civil Statutes).

[Section 73.004-73.100 reserved for expansion]

SUBCHAPTER B. PRESUMPTION OF INACTIVITY

Section 73.101. Account or Safe Deposit Box Presumed Inactive.

(a) An account or safe deposit box is presumed inactive if:

(1) the account or safe deposit box has been inactive for at least five years;

(2) the location of the depositor of the account or owner of the safe deposit box is unknown to the depository; and

(3) the amount of the account or the contents of the box have not been delivered to the State Treasurer in accordance with Chapter 74.

(b) To satisfy the five-year period of inactivity required by subdivision (1) of Subsection (a), the account or safe deposit box must have been inactive for a continuous period beginning not later than June 30 of the fifth year preceding the year in which the report is filed under Chapter 74.

CHAPTER 74. REPORT, DELIVERY, AND CLAIMS PROCESS

SUBCHAPTER A. APPLICABILITY

Section 74.001. Applicability

This chapter applies to a holder of property that is presumed:

(1) abandoned under Chapter 72 or Chapter 75; or

(2) inactive under Chapter 73.

[Sections 74.002-74.100 reserved for expansion]

SUBCHAPTER B. PROPERTY REPORT

Section 74.101. Property Report

(a) Each holder, other than a life insurance company, who on June 30 of a year holds property that is presumed abandoned under Chapter 72 or Chapter 75 or inactive under Chapter 73 shall file a report of that property on or before November 1 of that year. A life insurance company that on December 31 of a year holds property that is presumed abandoned under Chapter 72 shall file a report of that property on or before May 1 of the following year. Each report shall be filed with the state treasurer as provided

by this section and on forms prescribed by the State Treasurer.[1]

(b) A holder required by Subsection (a) to file a report shall file a report each successive year regardless of whether the holder has any reportable property on June 30 of the year in which the report is filed.

(c) The property report must include:

(1) the name, if known, and the last known address, if any, of each person who, from the records of the holder of the property, appears to be the owner of the property, or the name and address, if known, of any person who is entitled to the property;

(2) a brief description of the property, the identification number, if any, and if appropriate, a balance of each account, except as provided by Subsection (e);

(3) the date that the property became payable, demandable, or returnable;

(4) the date of the last transaction with the owner concerning the property;

(5) any deduction made by the holder of the property for a service,

[1]See the transitional rule on page 123 for property reported to the State Treasurer but not delivered prior to the effective date of S.B. No. 906, 69th Legislature, Regular Session, 1985.

maintenance or other charge, unless fully restored and included in the amount reported; and

(6) other information that the state treasurer by rule requires to be disclosed as necessary for the administration of this chapter.

(d) Amounts due that individually are less than $25 shall be reported in the aggregate without furnishing any of the information required by Subsection (c).

Section 74.102. Verification

(a) The person preparing a property report shall place at the end of each copy of the report a verification made under oath and executed by:

(1) the individual holding the reported property;

(2) a partner, if the holder is a partnership;

(3) an officer, if the holder is an unincorporated association or a private corporation; or

(4) the chief fiscal officer, if the holder is a public corporation.

(b) The verification must include the following sentence:

"The foregoing report contains a full and complete list of all property held by the undersigned

that, from the knowledge and records of the undersigned, is abandoned under the laws of the State of Texas."

Section 74.103. Retention of Records

(a) A holder required to file a property report under Section 74.101 shall keep a record of:

(1) the name and last known address of each person who, from the records of the holder of the property, appears to be the owner of the property;

(2) a brief description of the property, including the identification number, if any; and

(3) the balance of each account, if appropriate.

(b) The record must be kept for 10 years from the date on which the property is reportable, regardless of whether the property is reported in the aggregate under Section 74.101.

(c) The state treasurer may by rule provide for a shorter period for keeping a record required by this section.

[Section 74.104-74.200 reserved for expansion]

SUBCHAPTER C. NOTICE

Section 74.201. Published Notice

(a) Except as provided by Subsection (b) and Subsection 74.202, the State Treasurer shall publish a notice in the newspaper of general circulation in March of the year immediately following the year in which the report required by Section 74.101 is filed. The notice must be published:

(1) in the county in which the last known address of a person required to be named in the notice is located; or

(2) if the address of a person listed is not set out in the report or if it is outside the state, in the county in which the holder of the abandoned property has its principal place of business, registered office, or agent for service in this state.

(b) The State Treasurer may use a method of publishing notice that is different from that prescribed by Subsection (a) (1) or (2) if the State Treasurer determines that the different method would be as likely as the prescribed method to give actual notice to the person required to be named in the notice.

(c) The published notice must state that the reported property is presumed abandoned and subject to this chapter and must contain:

(1) the name and city of last known address, if any, of each person listed in the property report filed under Section 74.101, listed alphabetically by name;

(2) A statement that, by addressing an inquiry to the State Treasurer, any person possessing an interest in the reported property may obtain information concerning the amount and description of the property and the name and address of the holder; and

(3) a statement that if the owner does not present proof of the claim to the holder and establish the owner's right to receive the property within the period provided by Section 74.301, the property will be delivered to the State Treasurer and that all claims made after that delivery must be sent to the State Treasurer.

Section 74.202. Notice for Item with Value not Exceeding $50

In the notice required by Section 74.201, the state treasurer is not required to publish information regarding an item having a value that is less than $50 unless the state treasurer determines that publication of that information is in the public interest.

Section 74.203. Notice to Owner

(a) During March of the year immediately following the year in which the report

required by Section 74.101 is filed, the state treasurer shall mail a notice to each person who has a Texas address and appears to be entitled to the reported property valued at $50 or more.

(b) The notice must contain:

(1) a statement that, according to a report filed with the state treasurer, property is being held to which the addressee appears to be entitled;

(2) the name and address of the person holding the property and any necessary information regarding changes of name and address of the holder; and

(3) a statement that if the owner does not present proof of the claim to the holder and establish the owner's right to receive the property within the period provided by Section 74.301, the property will be delivered to the state treasurer and that all claims made after that delivery must be sent to the state treasurer.

Section 74.204. Notice that Accounts are Subject to this Chapter

Publication of notice in accordance with Section 74.201 is notice to the owner by the holder and this state that the reported property is subject to this chapter.

Section 74.205. Charge for Notice

The state treasurer may charge the following against the property delivered under this chapter:

(1) expenses incurred for the publication of notice required by Section 74.201; and

(2) the amount paid in postage for the notice to owner required by Section 74.203.

[Sections 74.206-74.300 reserved for expansion]

SUBCHAPTER D. DELIVERY

Section 74.301. Delivery of Property to the State Treasurer

(a) If the owner of property for which notice is published does not establish the owner's right to the property within six months after the date on which the report is required to be filed by Section 74.101, then the holder of the property, other than a life insurance company, shall deliver the property to the state treasurer on or before May 1 of the year following the year in which the report is required to be filed. If the holder of the property is a life insurance company, the company shall deliver the property to the state treasurer on or before November 1 of the year in which the report is required to be filed.

(b) If the property subject to delivery under Subsection (a) is stock or some other intangible ownership interest in a

business association for which there is no evidence of ownership, the holder shall issue a duplicate certificate or other evidence of ownership to the state treasurer at the time delivery is required under this section.

(c) Instead of delivering to the state treasurer reported property for which publication of notice is required, the holder shall file with the state treasurer a verified written explanation of the proof of claim or the error in the presumption of abandonment or inactivity if:

(1) the owner establishes the owner's right to the property to the satisfaction of the holder of the property within six months after the date on which the report was filed; or

(2) it appears that for some other reason the presumption of abandonment is erroneous.

Section 74.302. Verification of delivered Property

(a) Property delivered under Section 74.301 must be accompanied by a verification under oath that:

(1) the property delivered is a complete and correct remittance of all accounts subject to this chapter in the holder's possession;

(2) the existence and location of the listed owners are unknown to the holder; and

(3) the listed owners have not asserted a claim or exercised an act of ownership with respect to the owner's reported property since the date on which the property report was filed.

(b) The verification in Subsection (a) shall be signed by:

(1) the individual holding the reported property;

(2) a partner, if the holder is a partnership;

(3) an officer, if the holder is an unincorporated association or a private corporation; or

(4) the chief fiscal officer, if the holder is a public corporation.

Section 74.303. Effect of Late Notice.

Failure of the state treasurer to give notice within the period prescribed by Section 74.201 or Section 74.203 does not affect:

(1) the owner's right to claim the property from the holder before it is delivered to the state treasurer; or

(2) the holder's duty to deliver the property to the state treasurer on the date specified by Section 74.301.

Section 74.304. Responsibility after Delivery

(a) If reported property is delivered to the state treasurer, the state shall assume custody of the property and responsibility for its safekeeping.

(b) A holder who delivers property to the state treasurer in good faith is relieved of all liability to the extent of the value of the property delivered for any claim then existing, that may arise after delivery to the state treasurer, or that may be made with respect to the property.

(c) If the holder delivers property to the state treasurer in good faith and, after delivery, a person claims the property from the holder or another state claims the property under its laws relating to escheat or unclaimed property, the attorney general shall, on written notice of the claim, defend the holder against the claim and the holder shall be indemnified from the unclaimed money fund established in Section 74.601 against any liability on the claim.

(d) The state treasurer is not, in the absence of negligence or mishandling of the property, liable to the person who claims the property for damages incurred while the property or the proceeds from the sale of the property are in the treasurer's

possession. But in any event the liability of the state is limited to the extent of the property delivered under this chapter and remaining in the possession of the state treasurer at the time a suit is filed.

(e) For the purposes of this section, payment or delivery is made in good faith if:

(1) payment or delivery was made in a reasonable attempt to comply with this chapter;

(2) the person delivering the property was not a fiduciary then in breach of trust with respect to the property and had a reasonable basis for believing based on the facts then known to the person that the property was abandoned or inactive for purposes of this chapter; and

(3) there is no showing that the records under which the delivery was made did not meet reasonable commercial standards of practice in the industry.

(f) On delivery of a duplicate certificate or other evidence of ownership to the state treasurer under Subsection 74.301(b), the holder and any transfer agent, registrar, or other person acting for or on behalf of a holder in executing or delivering the duplicate certificate are relieved of all liability of every kind in accordance with this section to any person, including any person acquiring the original certificate or the duplicate of the certificate issued to

the state treasurer, for any losses or damages resulting to any person by the issuance and delivery to the state treasurer of the duplicate certificate.

Section 74.305. Suit to Compel Delivery

(a) If a holder fails to deliver property to the state treasurer in accordance with this subchapter, the attorney general shall bring an action in the name of this state on request of the state treasurer to compel the delivery of the property.

(b) Venue for a suit brought under this section is in a district court in Travis County, Texas.

(c) The fact that a suit seeks to compel delivery of property from more than one holder is not grounds for an objection concerning the misjoinder of parties or causes of action.

(d) In a suit filed under this section, the attorney general must show that the notice required by Sections 74.201 and 74.203 has been given. When introduced into evidence the verified property report, unless rebutted, is sufficient evidence that the property is abandoned and subject to delivery under this chapter and for entry of a judgment transferring custody of the property to the state treasurer.

Section 74.306. Unclaimed Property Held by Federal Government

(a) If the federal government enacts a law that provides for the discovery of unclaimed property held by the federal government and that provides or makes that information available to the states, the state treasurer may pay to the federal government from the unclaimed money fund the proportional share of the necessary cost of examining records.

(b) If the federal government delivers unclaimed property to the state treasurer, this state shall hold the federal government harmless from claims made by owners of the property after delivery.

Section 74.307. List of Owners

(a) The state treasurer shall compile and revise each year, except as to amounts reported in the aggregate, an alphabetical list of the names and last known addresses of the owners listed in the reports and the amount credited to each account.

(b) The state treasurer shall make the list available for public inspection during all reasonable business hours.

Section 74.308. Period of Limitation Not a Bar

The expiration, on or after September 1, 1987, of any period specified by contract, statute, or court order, during which an action or proceeding may be initiated

or enforced to obtain payment of a claim for money or recovery of property, does not prevent the money or property from being presumed abandoned property and does not affect any duty to file a report required by this chapter or to pay or deliver abandoned property to the State Treasurer.

Section 74.309. Private Escheat Agreements Prohibited

An individual, corporation, business association, or other organization may not act through amendment of articles of incorporation, amendment of bylaws, private agreement, or any other means to take or divert funds or personal property into income, divide funds or personal property among locatable patrons or stockholders, or divert funds or personal property by any other method for the purpose of circumventing the unclaimed property process.

[Sections 74.310-74.400 reserved for expansion]

SUBCHAPTER E. DISPOSITION OF DELIVERED PROPERTY

Section 74.401. Sale of Property

(a) Except as provided by Subsection (c), the state treasurer shall sell at public sale all personal property, other than money, delivered to the state treasurer in accordance with Section 74.301. The state treasurer shall conduct the sale in the city in this state that the state treasurer determines affords the most favorable market for the particular property.

(b) The state treasurer shall sell the property to the highest bidder. If the state

treasurer determines that the highest bid is insufficient, the state treasurer may decline that bid and offer the property for public or private sale.

(c) The state treasurer is not required to offer property for sale if the property belongs to a person with an address outside this state or the state treasurer determines that the probable cost of the sale of the property exceeds its value.

(d) If after investigation the state treasurer determines that property delivered from a safe deposit box or other repository has insubstantial commercial value, the state treasurer may destroy or otherwise dispose of the property at any time.

(e) A person may not maintain any action or proceeding against the state, an officer of the state, or the holder of property because of an action taken by the state treasurer under this section.

Section 74.402. Notice of Sale

(a) Before the 21st day preceding the day on which a sale, public or private, is held under Section 74.401, the state treasurer shall publish notice of the sale in a newspaper of general circulation in the county where the sale is to be held.

Section 74.403. Purchaser's Title

(a) At a sale, public or private, of property that is held under this subchapter, the purchaser receives title to the purchased

property free from all claims of the prior owner and prior holder of the property and all persons claiming through or under the owner or holder.

(b) The state treasurer shall execute all documents necessary to complete the transfer of title.

[Sections 74.404-74.500 reserved for expansion]

SUBCHAPTER F. CLAIM FOR DELIVERED PROPERTY

Section 74.501. Filing of Claim

(a) Except as provided by Subsection (b), claim for property or proceeds from the sale of property delivered to the state treasurer under this chapter, including claims by other states, must be filed with the state treasurer.

(b) If a claim is for inactive property that was held by a depository before being delivered to the state treasurer, the claim may be filed with the depository under Section 74.502.

(c) All claims to which this section applies must be filed in accordance with procedures and on forms prescribed by the state treasurer.

Section 74.502. Claim filed with Depository

(a) If inactive property held by a depository under Chapter 73 is delivered to the state treasurer under Section 74.301, a claim

may be filed with the depository except that any claim by another state must be filed with the state treasurer. The state treasurer shall prescribe forms and procedures for filing claims with depositories.

(b) If a claim is filed with a depository under this section and the depository determines in good faith that the claim is valid, the depository may pay the amount of the claim.

(c) If the amount paid under Subsection (b) is $100 or less, the state treasurer shall reimburse the depository on receipt of a written statement subscribed and sworn to by an officer of the depository that states:

(1) the name and address of the person to whom payment was made; and

(2) that the depository believes in good faith that the claim is valid.

(d) If the amount paid under Subsection (b) is more than $100, the state treasurer and the attorney general shall examine the claim and any supporting affidavit or evidence of the claim. Before the state treasurer may reimburse a depository for a claim under this subsection, the claim must be approved and signed by the state treasurer and the attorney general.

Section 74.503. Consideration of Claim

The state treasurer and the attorney general or their authorized agents jointly shall consider the validity of each claim filed under this subchapter.

Section 74.504. Hearing

(a) The state treasurer and the attorney general may hold a hearing and receive evidence concerning a claim filed under this subchapter.

(b) If the state treasurer and the attorney general consider that a hearing is necessary to determine the validity of a claim, both the state treasurer and the attorney general shall sign the statement of the findings and the decision on the claim. The statement shall report the substance of the evidence heard and the reasons for the decision. The statement is a public record.

(c) If the state treasurer and the attorney general determine that a claim is valid, they shall approve and sign the claim.

Section 74.505. Payment of Claim

(a) If a claim is for money and has been approved under this subchapter, the state treasurer shall pay the claim.

(b) If a claim is for personal property other than money and has been approved under this subchapter, the state treasurer promptly shall deliver the property to the claimant unless the state treasurer has

sold the property. If the property has been sold under Section 74.401, the state treasurer shall pay to the claimant the proceeds from the sale.

(c) Costs of publication and postage shall be deducted from the amounts paid under this section, but deductions for any costs of administration or service charges may not be made.

Section 74.506. Appeal

(a) A person aggrieved by the decision of a claim filed under this subchapter may appeal the decision before the 61st day after the day on which it was rendered.

(b) If a claim has not been decided before the 91st day after the day on which it was filed, the claimant may appeal within the 60-day period beginning on the 91st day after the day of filing.

(c) An appeal under this section must be made by filing suit against the state in a district court in Travis County, Texas, or in the county in which the claimed funds were deposited. The state's immunity from suit without consent is abolished with respect to suits brought under this section.

(d) A court shall try an action filed under this section de novo and shall apply the rules of practice of the court.

Section 74.507. Fee for Recovery

A person who informs a potential claimant that the claimant may be entitled to claim property that is reportable to the State Treasurer under this chapter, that has been reported to the State Treasurer, or that is in the possession of the State Treasurer, or a person who files a claim under this subchapter for such property on behalf of a claimant, may not contract for or receive from the claimant for services an amount that exceeds 10 percent of the value of the property recovered. If the property involved is mineral proceeds, the amount for services may not include a portion of the underlying minerals or any production payment, overriding royalty, or similar payment.

Section 74.508. Claim of Another State to Recover Property; Procedure

(a) At any time after property has been paid or delivered to the State Treasurer under this Act, another state may recover the property if:

(1) the property was subjected to custody by this state because the records of the holder did not reflect the last known address of the apparent owner when the property was presumed abandoned under this Act, and the other state establishes that the last known address of the apparent owner or other person entitled to the property was in that state and under the laws of that state the property escheated to or was subject to a claim of abandonment by that state;

(2) the last known address of the apparent owner or other person entitled to the property, as reflected by the records of the holder are in the other state and under the laws of that state the property has escheated to or become subject to a claim of abandonment by that state;

(3) the records of the holder were erroneous in that they did not accurately reflect the actual owner of the property and the last known address of the actual owner is in the other state and under the laws of that state the property escheated to or was subject to a claim of abandonment by that state;

(4) the property was subjected to custody by this state under Subdivision (6) of Subsection (a) of Section 72.001 and under the laws of the state of domicile of the holder the property has escheated to or become subject to a claim of abandonment by that state; or

(5) the property is the sum payable on a traveler's check, money order, or other similar instrument that was subjected to custody by this state under Subdivision (4) and the instrument was purchased in the other state and under the laws of that state the property escheated to or became subject to a claim of abandonment by that state.

(b) The claim of another state to recover escheated or abandoned property must be presented in a form prescribed by the State Treasurer, who shall decide the claim within 90 days after it is presented. The State Treasurer shall allow the claim if he determines that the other state is entitled to the abandoned property under Subsection (a).

[Sections 74.509-74.600 reserved for expansion]

SUBCHAPTER G. UNCLAIMED MONEY FUND

Section 74.601. Fund

(a) The state treasurer shall maintain a fund known as the unclaimed money fund.

(b) The state treasurer shall deposit to the credit of the fund:

(1) all funds delivered to the state treasurer under this chapter; or any other statute requiring the delivery of unclaimed property to the state treasurer;

(2) all proceeds from the sale of any property under this chapter.

(3) all funds that have escheated to the state under Chapter 71, except that funds relating to escheated real property shall be deposited according to Section 71.202; and

(4) any income derived from investments of the fund.

(c) The state treasurer shall keep a separate record and accounting for delivered unclaimed property, other than money, before its sale.

(d) The state treasurer, shall from time to time invest the amount in the unclaimed money fund that exceeds $50,000 in investments approved by law for the investment of state funds.

Section 74.602. Use of Fund

(a) Except as provided by Subsection (b), the state treasurer shall use the unclaimed money fund to pay the claims of persons or states establishing ownership of property in the possession of the state treasurer under this chapter or any other unclaimed property or escheat statute.

(b) Any funds remaining in the unclaimed money fund shall be transferred, at least once each fiscal year, in an amount that in the state treasurer's judgment would leave a balance sufficient to pay the anticipated expenses and claims of the fund, to the foundation school fund and to the general revenue fund in equal amounts.

(c) The state treasurer and the attorney general may use the unclaimed money fund generally for the enforcement and administration of this title, including the expenses of sale, forms, notices, examin-

ations, travel, court costs, supplies, equipment, employment of necessary personnel, and any other necessary expenses.

Section 74.603. Audit; Appropriation

The unclaimed money fund is subject to audit by the state auditor and to appropriation by the legislature for enforcing and administering this title.

[Sections 74.604-74.700 reserved for expansion]

SUBCHAPTER H. ENFORCEMENT

Section 74.701. Rules

The state treasurer may adopt rules necessary to carry out this title.

Section 74.702. Examination of Records

(a) To enforce this chapter and to determine whether reports have been made as required by this chapter, the state treasurer, the attorney general, or an authorized agent of either, at any reasonable time, may examine the books and records of the holder.

(b) The state treasurer, the attorney general, or an agent of either may not make public any information obtained by an examination made under this section and may not use that information except in the course of a judicial proceeding, authorized by this chapter, in which the state is a party.

Section 74.703. Additional Personnel

(a) The state treasurer and the attorney general may employ, in the office of either official, additional personnel necessary to enforce this title.

(b) The salary rate of additional personnel may not exceed the rate paid to other state employees for similar services.

(c) The salaries of additional personnel shall be paid in accordance with Section 74.602.

Section 74.704. Assistance in Enforcement

If the state treasurer or the attorney general requests, the state auditor, state comptroller, banking commissioner, securities commissioner, insurance commissioner, savings and loan commissioner, Credit Union Commission, Department of Public Safety, or any district or county attorney shall assist the state treasurer or attorney general in enforcing this title.

Section 74.705. Interest, Attorney's Fees, and Penalties

(a) A person who fails to pay or deliver property within the time prescribed by this chapter shall pay to the State Treasurer interest, at the judgment rate of interest as published by the consumer credit commissioner in the Texas Register, on the property or value of the property from the date the property should have been paid or delivered until the date the property is actually paid or delivered.

(b) If the State Treasurer presents a claim for unclaimed property to a person who fails timely to pay or deliver the property and the just amount of unclaimed property owed has not been tendered before the 31st day after the date the claim is presented, the State Treasurer may, on approval of a court of competent jurisdiction in Travis County, recover reasonable attorney's fees from the person in addition to unclaimed property and interest due.

(c) A person commits an offense if the person:

(1) wilfully fails to file a report required by this chapter;

(2) refuses to permit examination of records in accordance with this chapter;

(3) makes a deduction from or a service charge against a dormant account or dormant deposit of funds; or

(4) violates any other provision of this title.

(d) An offense under this section is punishable by:

(1) a fine of not less than $500 nor more than $1,000;

(2) confinement in jail for a term not to exceed six months; or

(3) both the fine and confinement.

(e) In addition to a criminal penalty, a person who commits an offense under Subsection (c) is subject to a civil penalty not to exceed $100 for each day of the violation. The attorney general shall collect civil penalty by bringing suit on behalf of the state in a district court in Travis County, Texas.

CHAPTER 75. TEXAS MINERALS

SUBCHAPTER A. APPLICABILITY

Section 75.001. Definitions; Application of Chapter

(a) in this chapter:

(1) "Mineral" means oil, gas, uranium, sulphur, lignite, coal, and any other substance that is ordinarily and naturally considered a mineral in this state, regardless of the depth at which the oil, gas, uranium, sulphur, lignite, coal, or other substance is found.

(2) "Mineral proceeds" includes:

(A) all obligations to pay resulting from the production and sale of minerals, including net revenue interest, royalties, overriding royalties, production payments, and joint operating agreements; and

(B) all obligations for the acquisition and retention of a mineral lease, including bonuses, delay rentals, shut-in royalties, and minimum royalties.

(3) "Holder" means a person, wherever organized or domiciled, who is:

(A) in possession of property that belongs to another;

(B) a trustee; or

(C) indebted to another on an obligation.

(b) This chapter applies to mineral proceeds and the owner's underlying right to receive those mineral proceeds if:

(1) the owner's underlying right to receive mineral proceeds is related to land located in this state;

(2) the mineral proceeds result from the production of minerals located in this state; or

(3) the mineral proceeds are an obligation for the acquisition or retention of a mineral lease to produce minerals located in this state.

(c) A holder of property presumed abandoned under this chapter is subject to the procedures of Chapter 74.

(d) This chapter supplements other chapters in this title, and each chapter shall be followed to the extent applicable.

[Sections 75.002-75.100 reserved for expansion]

SUBCHAPTER B. PRESUMPTION OF ABANDONMENT

Section 75.101. Presumption of Abandonment

(a) All mineral proceeds that are held or owing by the holder and that have remained unclaimed by the owner for longer than three years after they became payable or distributable and the owner's underlying right to receive those mineral proceeds are presumed abandoned.

(b) At the time any owner's underlying right to receive mineral proceeds is presumed abandoned under this section, any mineral proceeds then held for or owing to the owner as a result of the underlying right and any mineral proceeds accruing after that time as a result of the underlying right and not previously presumed abandoned are presumed abandoned.

Section 75.102. Preservation of Property

A holder of abandoned property shall preserve that property and may not by any procedure, including a deduction for service, maintenance, or other charge, transfer, convert, or reduce the property to the profits or assets of the holder.

Transitional Rule

(a) Except as provided in Subsection (b) of this section, the first report filed under Title 6, Property Code, as amended by this Act shall be due on or before November 1, 1985, and shall include all property presumed abandoned or inactive under Title 6 as of June 30, 1985, unless the holder has previously reported or delivered the property to the state treasurer.

(b) If the holder is a life insurance company, the first report filed under Title 6, Property Code, as amended by this Act shall be due on or before May 1, 1986, and shall include all property presumed abandoned under Title 6 as of December 31, 1985.

(c) Property presumed abandoned or inactive under Title 6 of the Property Code before the effective date of this Act, and for which a report has been filed with the state treasurer, shall be delivered to the state treasurer in accordance with Title 6 of the Property Code as it existed before being amended by this Act, and that law is continued in effect for that purpose.

MISCELLANEOUS PROVISIONS OF S. B. 906,
69TH LEGISLATURE, REGULAR SESSION, 1985

NAT. RES. CODE ANN., 91.403
(VERNON 1978)
(Subsection (c) is new material)

Section 91.403. Payment of Interest on Late Payments

(a) If payment has not been made for any reason in the time limits specified in Section 91.402(a) of this code, the payor must pay interest to a payee beginning at the expiration of those time limits at the rate charged on loans to depository institutions by the New York Federal Reserve Bank, unless a different rate of interest is specified in a written agreement between payor and payee.

(b) Subsection (a) of this section does not apply where payments are withheld or suspended by a payor beyond the time limits specified in Section 91.402(a) of this code because there is:

(1) a dispute concerning title that would affect distribution of payment;

(2) a reasonable doubt that the payee does not have a clear title to the interest in the proceeds of production; or

(3) a requirement in a title opinion that places in issue the title, identity, or whereabouts of the payee and that

has not been satisfied by the payee after a reasonable request for curative information has been made by the payor.

(c) The payor's obligation to pay interest and the payee's right to receive interest under Subsection (a) of this section terminate on delivery of the proceeds and accumulated interest to the state treasurer as provided by Title 6, Property Code.

REPEAL OF COUNTY ESCHEAT STATUTE

Chapter 321, Acts of 66th Legislature, Regular Session, 1979 (Article 1581h, Vernon's Texas Civil Statutes) is repealed.

BRIEF OF THE STATE OF TEXAS IN SUPPORT OF MOTION FOR LEAVE TO FILE COMPLAINT IN INTERVENTION

EXHIBIT B

Library References

Escheat 8(2).
C.J.S. Escheat §§20, 21.

ARTICLE III--UNCLAIMED PROPERTY HELD OR OWING BY BANKING ORGANIZATIONS

Section
306. Reimbursement for instruments paid.

§ 300. Unclaimed property held or owing by banking organizations.

1. The following unclaimed property held or owing by banking organizations shall be deemed abandoned property:

(a) Any amounts due on deposits or any amounts to which a shareholder of a savings and loan association or a credit union is entitled, held or owing by a banking organization, which shall have remained unclaimed for five years by the person or persons appearing to be entitled thereto, including any interest or dividends credited thereon, excepting

(i) any such amount which has been reduced or increased, exclusive of dividend or interest payment, within five years or

(ii) any such amount which is represented by a passbook not in the possession of the banking organization, which has been presented for entry of dividend or interest credit within five years, or

(iii) any such amount with respect to which the banking organization has on file written evidence

received within five years that the person or persons appearing to be entitled to such amounts had knowledge thereof, or

(iv) any such amount payable only at or by a branch office located in a foreign country, or payable in currency other than United States currency, or

(v) any amount held or owing by the banking organization as agent, or as trustee of an express trust (active or passive), for the purpose of making payment to holders of, or in respect of, stocks, bonds or other securities of a governmental or other public issuer.

(b) Any amounts, together with all accumulations of interest or other increment thereon, held or owing by a banking organization for the payment of an interest in a bond and mortgage apportioned or transferred by it pursuant to subdivision seven of former section one hundred eighty-eight of the banking law as it existed prior to July first, nineteen hundred thirty-seven, which shall have remained unclaimed by the person or persons appearing to be entitled thereto for five years after the full and final liquidation of such mortgage, excepting

(i) any such amount which has been reduced by payment to the person or persons appearing to be entitled thereto within five years, or

(ii) any such amount which is represented by a certificate of share ownership not in the possession of the banking organization, which certificate has been presented for transfer within five years, or

(iii) any such amount with respect to which the banking organization has on file written evidence received within five years that the person or persons

appearing to be entitled to such amount had knowledge thereof.

(c) Any amount held or owing by a banking organization for the payment of a negotiable instrument under article three of the uniform commercial code or a certified check whether negotiable or not, on which such organization is directly liable, which instrument shall have been outstanding for more than five years from the date it was payable or from the date of its issuance, if payable on demand; provided, however, the provisions of this paragraph (c) shall not apply

(i) to any negotiable instrument payable outside the continental limits of the United States, or

(ii) to any instrument payable in currency other than United States currency, or

(iii) to any negotiable instrument issued to pay out any amount held or owing by the banking organization as agent, or as trustee of an express trust (active or passive), for the purpose of making payment to holders of, or in respect of, stocks, bonds or other securities of a governmental or other public issuer.

(d) After the expiration of three years from the opening of any vault, safe deposit box or other receptacle by a banking organization pursuant to the provisions of the banking law, any surplus amounts arising from a sale by such banking organization of the contents of such vault, safe deposit box or other receptacle pursuant to the provisions of the banking law, the balance remaining of any United States coin or currency among the contents of such vault, safe deposit box or other receptacle and the balance remaining of the proceeds of the principal of or interest or dividends

on any securities among the contents of such vault, safe deposit box or other receptacle or the securities themselves which have remained unsold by the banking organization.

(e) any amount or security representing a dividend or other payment received (i) after June thirtieth, nineteen hundred forty, by a banking organization or its nominee as the record holder of any stock, bond, or other security of any corporation, association or joint stock company to which amount or security an unknown person (except a person entitled to such dividend or other payment upon the surrender of other outstanding securities) is entitled or (ii) on or after July first, nineteen hundred seventy-four by a banking organization or its nominee other than as a holder of record or as holder of record for known persons on any stock, bond or other security of any corporation, association or joint stock company or (iii) on or after July first, nineteen hundred eighty-four by a banking organization or its nominee on any stock, bond, or other security of a governmental or other public issuer, (1) which shall have remained unclaimed by the person entitled thereto for three years after receipt thereof by such banking organization or its nominee, or (2) when the stock, bond or other security with respect to which such amount or security representing a dividend or other payment is payable has been deemed abandoned.

(f) Except as provided in paragraph (e) of this subdivision, any stock, bond or other security of any corporation, association or joint stock company received on or after July first, nineteen hundred seventy-seven or any stock, bond or other security of any governmental or other public issuer received on or after July first, nineteen hundred eighty-four by a banking organization or its nominee and held by such banking

organization or its nominee (1) as holder of record of such stock, bond or other security, or (2) as custodian, trustee or fiduciary for a person other than the issuer with respect to such stock, bond or other security, or (3) for unknown persons where, for three successive years, (i) all amounts payable upon such stocks, bonds, or other securities of any corporation, association or joint stock company and received by such banking organization or its nominee on or after July first, nineteen hundred seventy-seven or all amounts payable upon such stocks, bonds, or other securities of any governmental or other public issuer and received by such banking organization or its nominee on or after July first, nineteen hundred eighty-four have remained unclaimed by the person entitled thereto, and (ii) no written communication concerning such stock, bond or other security has been received from the person entitled thereto by such banking organization or its nominee.

(g) Any stock, bond, or other security held by a banking organization in any vault or other storage area in any capacity other than as set forth in paragraphs (d), (e) or (f) of this subdivision where, for three successive years, (i) such stock, bond or other security has remained unclaimed by the person entitled thereto, and (ii) no written communication concerning such stock, bond or other security has been received from the person entitled thereto by such banking organization.

(h) Any amount or security which, on or after January first, nineteen hundred forty-seven, shall have become payable or deliverable by a banking organization, as agent or trustee for a foreign or domestic corporation or fiduciary engaged in the conduct of business, to a resident when such amount or

security shall have remained unpaid or undelivered to the person or persons entitled thereto for three years.

(i) Any amount or security which shall have become payable or deliverable by a banking organization, as agent or trustee for a corporation, association or joint stock company which shall have discontinued the conduct of its business, or the corporate existence of which shall have terminated, without the right to receive such amount having passed to a sucessor or successors, and which shall have remained unpaid or undelivered to the person or persons entitled thereto for three years.

(j) Any amount which, on or after January first, nineteen hundred thirty-seven, shall have become payable by a banking organization (other than a foreign banking corporation) to a holder or owner of its capital stock, and which shall have remained unclaimed for three years by the person or persons appearing to be entitled thereto.

(k) Lost property or instruments as defined in section two hundred fifty-one of the personal property law which shall have been held by a safe deposit company or bank for five years pursuant to the provisions of section two hundred fifty-six of the personal property law.

2. Any abandoned property held or owing by a banking organization to which the right to receive the same is established to the satisfaction of such banking organization shall cease to be deemed abandoned.

3. A deposit made with a banking organization directly by a court or by a guardian pursuant to order of a court for the benefit of a person who was an infant at the time of the making of such

deposit, which deposit is subject to withdrawal only upon the further order of such court, shall not be subject to the provisions of this chapter until such infant attains the age of eighteen years or until the death of such infant whichever event occurs sooner.

4. As used in sections three hundred to three hundred three inclusive of this article, the term "banking organization" shall be deemed to include the New York agency or agencies of all foreign banking corporations licensed to do business in this state pursuant to article five of the banking law, and the word "deposits" shall be deemed to include credit balances maintained by such agencies for the account of others in accordance with the provisions of section two hundred two-a of the banking law.

PROOF OF SERVICE

I MARY F. KELLER, certify that I am counsel of record for Plaintiff in Intervention, the State of Texas, that I am a member of the Bar of the Supreme Court of the United States, and that on the 6th day of January, 1989, I served copies of the foregoing Motion for Leave to File Complaint in Intervention, Complaint in Intervention, and Brief in Support of Motion for Leave to File Complaint, on all parties required to be served by depositing such copies, first class postage prepaid, in the United States mail, addressed as follows:

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